NEW DEVELOPMENTS, YEAR END UPDATE

AND 1040 CONSIDERATIONS

JANUARY 2023

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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 Reserves

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 (mandatory referendum). Expenditures from a specific capital reserve must be authorized by the Board; there are no referendum requirements for expenditures made from a specific capital reserve fund.

Type Capital Reserves

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 (mandatory referendum). 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.

As noted above, there are two types of referendums that apply to the establishment of or the expenditure of capital reserve funds.

- Permissive referendum- requires the municipality to publish and post a legal notice informing taxpayers of the Board's planned action (i.e. establishment of a specific capital reserve). The legal notice also informs eligible voters of their right to file a petition to require the matter to be subjected to voter approval.

- Mandatory referendum- no petition is filed and in all cases, eligible voters of the municipality must approve the proposed action or question before the action can take place.

The capital reserves are 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 Section 3651 of the Education Law, 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-I) is required to be established to restrict the use of the proceeds of the cash sale of a capital improvements and state and federal aid received for capital improvements, generally 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; these repairs are of a type not recurring annually or at 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 for school districts (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.

All or any part of a repair reserve fund may generally be transferred to a capital reserve fund or, in school districts, to a reserve fund established pursuant to Section 3651 of the Education Law, or to a contingency and tax stabilization reserve fund. Subject to a public hearing with 15 days notice, unexpended balances may also be transferred to a retirement contribution reserve, established pursuant to GML §6-r.

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 or the New York State and Local Police and Fire 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 Section 3651 of the Education Law. 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 the 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

The Capital reserve (Education Law §3651) available to school districts is 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 Section §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 Tax Reduction

The reserve for tax reduction (Education Law, Sections §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.

See "Local Government Management Guide- Reserve Funds" released by the Office of the New York State Comptroller for further consideration of the reserve funds noted above.

B. TAX SHELTER ANNUITIES – LIMITATIONS

	2023	2022	2021	2020	2019
Exclusion for elective deferrals [IRC §402(g)(1)]	$20,500	$20,500	$19,500	$19,500	$19,000
Limitation on total elective and non-elective contributions [IRC §415 (c)(1)(A)]	$66,000	$61,000	$58,000	$57,000	$56,000
Limitation on deferrals under government [IRC §457(b)(2), IRC §457(c)(1)]	$20,500	$20,500	$19,500	$19,500	$19,000
Age 50 catch-up contributions limit (non-SIMPLE plans)[IRC §414(v)(2)(B)(i)]	$6,500	$6,500	$6,500	$6,500	$6,000
15 years of service catch-up limit	$3,000	$3,000	$3,000	$3,000	$3,000

C. RETIREMENT CONTRIBUTION PLANS UPDATE

New Contribution Rates

The Teachers' Retirement System's (TRS) 2022-2023 rate is 10.29% of payroll. The payments associated with this rate will be collected in the fall of 2023. According to TRS, the rate reflects changes to some actuarial assumptions. An administrative bulletin was issued August 2022 with the 2022-2023 TRS rate.

The 2022-2023 rates for the Employees' Retirement System (ERS) are 17.3% for Tier 1, 15.8% for Tier 2, 12.9% for Tier 3 and Tier 4, 11.0% for Tier 5, and 8.1% for Tier 6.

The Police and Fire Retirement System's (PFRS) employer contribution rate ranges for 2022-2023 for Tier 1 are 13.1% to 30.2%, Tier 2 11.1% to 29.9%, Tier 3 11.1% to 29.7%, Tier 5 7.6% to 25.3% (contributory), and Tier 6 4.1% to 20.5% (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.

D. GASB UPDATE

GASB Statement No. 87, *Leases*

GASB Statement No. 87 requires recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. The Statement establishes a single model for lease accounting reflecting the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

The requirements of this Statement are effective for fiscal years beginning after June 15, 2021, and all reporting periods thereafter. Earlier application is encouraged.

Leases should be recognized and measured using the facts and circumstances that exist at the beginning of the period of implementation (or, if applied to earlier periods, the beginning of the earliest period restated).

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

GASB Statement No. 96 establishes that a subscription-based information technology arrangement (SBITA) results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, Leases, as amended.

A 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 in combination 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 requirements of this Statement are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. Earlier application is encouraged.

Assets and liabilities resulting from SBITAs should be recognized and measured using the facts and circumstances that existed at the beginning of the fiscal year in which this Statement is implemented. Governments are permitted, but are not required, to include in the measurement of the subscription asset capitalizable outlays associated with the initial implementation stage and the operation and additional implementation stage incurred prior to the implementation of this Statement.

GASB Statement No. 100, *Accounting Changes and Error Corrections – An Amendment of GASB Statement No. 62*

GASB Statement No. 100 enhances accounting and financial reporting requirements for accounting changes and error corrections to provide more understandable, reliable, relevant, consistent, and comparable information for making decisions or assessing accountability.

This Statement defines *accounting changes* as changes in accounting principles, changes in accounting estimates, and changes to or within the financial reporting entity and describes the transactions or other events that constitute those changes. As part of those descriptions, for (1) certain changes in accounting principles and (2) certain changes in accounting estimates that result from a change in measurement methodology, a new principle or methodology should be justified on the basis that it is preferable to the principle or methodology used before the change. That preferability should be based on the qualitative characteristics of financial reporting such as understandability, reliability, relevance, timeliness, consistency, and comparability. This Statement also addresses corrections of errors in previously issued financial statements.

The requirements of this Statement are effective for accounting changes and error corrections made in fiscal years beginning after June 15, 2023, and all reporting periods thereafter. Earlier application is encouraged.

GASB Statement No. 101, *Compensated Absences*

GASB Statement No. 101 requires that liabilities for compensated absences be recognized for (1) leave that has not been utilized and (2) leave that has been utilized, but not yet paid in cash or settled through noncash means. A liability should be recognized for leave that has not been utilized if (a) the leave is attributable to services already rendered, (b) the leave accumulates, and (c) the leave is more likely than not to be utilized for time off or otherwise paid in cash or settled through noncash means. Leave is attributable to services already rendered when an employee has performed the services required to earn the leave. Leave that accumulates is carried forward from the reporting period in which it is earned to a future reporting period during which it may be used for time off or otherwise paid or settled. In estimating the leave that is more likely

than not to be used or otherwise paid or settled, a government should consider relevant factors such as employment policies related to compensated absences and historical information about the use or payment of compensated absences. However, leave that is more likely than not to be settled through conversion to defined benefit postemployment benefits should not be included in compensated absences.

This Statement requires that a liability for certain types of compensated absence such as parental leave, military leave, and jury duty leave—not be recognized until the leave commences. This Statement also requires that a liability for specific types of compensated absences not be recognized until the leave is utilized.

This Statement also establishes guidance for measuring a liability for leave that has not been used, generally using an employee's pay rate as of the date of the financial statements. With respect to financial statements prepared using the current financial resources measurement focus, this Statement requires that expenditures be recognized for the amount that normally would be liquidated.

This Statement amends the existing requirement to disclose the gross increases and decreases in a liability for compensated absences to allow governments to disclose only the net change in the liability (as long as they identify it as a net change). In addition, governments are no longer required to disclose which governmental funds typically have been utilized to liquidate the liability.

The requirements of this Statement are effective for fiscal years beginning after December 15, 2023, and all reporting periods thereafter. Earlier application is encouraged.

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

E. OFFICE OF THE STATE COMPTROLLER ACCOUNTING BULLETINS/GUIDANCE RECENTLY ISSUED

Federal Aid Received by School Districts

The Office of the State Comptroller ("OSC") issued a guidance document titled "*Federal Aid Received by NYS Local Governments and School Districts under the Coronavirus Response and Relief Supplemental Appropriations Act and the American Rescue Plan Act*". This guidance document stresses the importance of proper fiscal oversight, as discussed in the July 2020 Coronavirus Aid, Relief and Economic Security ("CARES") Act Information bulletin. It also identifies revenues available under the Coronavirus Response and Relief Supplemental Appropriations Act ("CRRSA") and the American Rescue Plan ('ARP") Act to local governments and school districts in New York State. Lastly, it addresses how local government and school district officials should account for CRRSA Act and ARP Act revenues and pandemic related expenditures.

CRRSA Act and ARP Act monies are an example of a non-recurring revenue stream and should be used to first fund non-recurring expenditures that meet the requirements set forth in the U.S. Department of Education and U.S. Department of Treasury's resources. While these monies are not prohibited from being used for recurring expenditures, a gap will be created in the ensuing

year's budget, as this one-time revenue source will no longer be available. Local governments and school districts will need to fill this gap by spending reserves (if available), using unrestricted fund balance, reducing services or increasing taxes. Thus, using non-recurring revenues to fund recurring expenditures is not recommended. Upon receipt of non-recurring revenue streams, such as CRRSA Act and ARP Act monies, the governing board will need to amend the current year's budget, assuming the funds have not already been budgeted. Overall appropriations will increase, and the governing board will need to ensure that CRRSA Act and ARP Act monies are utilized in accordance with expenditure guidelines.

To account for these funds, revenue cannot be recognized until the related expenditure has been incurred by the local government. GASB considers this type of aid a "voluntary nonexchange transaction" subject to eligibility requirements. The local governments will need to recognize a liability until all eligibility requirements are met (including eligible expenditures incurred) and then recognize the revenue. Local governments who do not have eligible expenditures incurred will need to record a liability using account code A688 Other Liabilities until expenditures have been incurred. Revenue account code A4089 Federal Aid, Other will then be used to recognize the aid (whether received directly from the federal government or the State) once the related expenditures have been incurred.

GASB No. 87, *Leases*

The Office of the State Comptroller ("OSC") issued a bulletin titled "*Accounting and Financial Reporting for Leases as Required by GASB Statement No. 87*" to provide accounting and financial reporting guidance for contracts that meet the definition of a lease. Local governments and school districts will need to account for and report these leases in the Annual Update Document (AUD) and the ST3. This bulletin addresses the following:

- An overview of lease accounting.
- Calculations needed for lessees and lessors to measure leases.
- Accounting and reporting requirements for leases in the AUD and ST-3, for both governmental and proprietary funds.
- Lease contracts with multiple components and contract combinations.
- Lease modifications and terminations.
- Necessary disclosures in the notes to the financial statements, including the notes to the AUD.
- Lease variations.

The guidance in this document should be applied to those leases that the local government or school district deem material. GASB 87 does not explicitly establish a threshold of materiality for lease capitalization. As such, determining materiality will be a managerial decision made by the governing board of each individual local government and school district.

For the purposes of the AUD reporting, local governments with a fiscal year beginning after June 15, 2021 will be the first units required to file with the requirements set forth in this bulletin. School districts will be required to file the 2021-2022 fiscal year ST-3 with the requirements set forth in this bulletin. All other annual financial reports that are required to follow the Office of the State Comptroller's uniform system of accounts will also be required to file with these requirements for fiscal years beginning after June 15, 2021. Changes in accounting of leases set

forth in this bulletin should be applied retroactively by restating financial statements, if practicable, for all prior periods presented. If restating prior periods is not practicable, the cumulative effect of applying these changes should be reported as a restatement of beginning net position or fund balance.

Please refer to the above bulletin for further guidance and accounting treatment and procedures.

F. NEW YORK STATE HEALTH CARE AND MENTAL HYGIENE WORKER BONUS (HWB) PROGRAM

Located within Part ZZ of Chapter 56 of the Laws of 2022, the HWB provision allows for the payment of bonuses to "recruit, retain, and reward health care and mental hygiene workers" meeting specified eligibility requirements. Bonus amounts will be commensurate with the number of hours worked by eligible workers covered by the HWB Program during designated vesting periods for up to a total of $3,000 per covered worker.

The following educational entities are included in the list of eligible employers: nonpublic schools, charter schools, approved preschool programs for students with disabilities, school districts and boards of cooperative educational services. The New York State Department of Health's (DOH's) website states that the education portion of the bonus program will roll-out in October 2022, and lists the eligible worker titles.

The HWB program is being administered by the New York State (NYS) Department of Health (DOH). Information and questions regarding the program and/or eligibility should be directed to the NYS Department of Health at NYSWorkersBonus@health.ny.gov or by calling the HWB Call Center at (866) 682-0077.

Please see DOH's website for more information:
https://health.ny.gov/health_care/medicaid/providers/hwb_program/index.htm.

G. EMS COST RECOVERY ACT- FIRE DISTRICTS

Effective July 8, 2022, volunteer fire departments or fire companies in New York State can now engage in cost recovery billings for ambulance services provided. By allowing municipalities and volunteer fire companies the option to recover costs for rendering EMS services, the legislation will provide relief to volunteer fire department budgets that have been strained by increasing EMS call volumes, especially in the face of rising costs for supplies, state-mandated training, fuel, personnel, and equipment.

H. FEDERAL FUNDING RECEIVED IN RESPONSE TO COVID-19- SCHOOL DISTRICTS

School districts have received Elementary and Secondary School Emergency Relief (ESSER) and Governor's Emergency Education Relief (GEER) funds to address the impacts of COVID-19 through three rounds of funding:

- Coronavirus Aid, Relief, and Economic Security Act, 2020 (CARES Act) (round 1)
- Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) round 2)
- American Rescue Plan Act, 2021 (ARP Act) (round 3)

Eligible expenditures must be incurred within the period of availability (performance):

- Beginning of period of availability (performance) is after March 13, 2020 for all awards.
- ESSER 1 (CARES) and GEER 1 (CARES) monies must be expended prior to September 30, 2022.
- ESSER 2 (CRRSA) and GEER 2 (CRRSA) monies must be expended prior to September 30, 2023.
- ESSER 3 (ARP) monies must be expended prior to September 30, 2024.

No extensions have been granted for the period of availability (performance) noted above.

GEER funds (rounds 1 and 2) may be used to support the ability of districts to continue to provide educational services to their students and to support the on-going functionality of the district. ESSER funds (rounds 1, 2, and 3) may be used for a variety of expenditures, including the following:

- To prevent, prepare, and respond to COVID-19.
- To develop strategies and implement public health protocols for reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff; includes hiring new staff and avoiding layoffs.
- ARP ESSER 3 has similar requirements to ESSER 2 for CRRSA 2, except :
- ESSER 3 requires the school district to reserve 20% of funds to address “Learning Loss”. The remaining 80% of funds may be used the same as ESSER 1 (CARES Act) and ESSER 2 (CRRSA).
- The school district must make publicly available on its website a plan for safe return to in-person instruction and continuity of services.

ESSER 1 (CARES) required school districts to provide equitable services to students and teachers in nonpublic schools in the same manner as Title I. ESSER 2 (CRRSA) and ESSER 3 (ARP) do not have this requirement. Non-public schools can apply for a separate grant for this purpose (Emergency Assistance for Non-public School or EANS). GEER 1 and GEER 2 also do not have this requirement.

See Department of Education FAQ documents for further information on allowable costs for the COVID-19 funding received.

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. There are different minimum wage rates for different industries. Effective December 31, 2022,

the New York State general minimum wage is increasing from $13.20 per hour to $14.20 per hour. The Long Island and Westchester general minimum wage rate will be $15.00 per hour. 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 January 31, 2023.

Electronic Payee Statements – If employees give their consent, you may be able to furnish Copies B, C, and 2 of IRS Form W-2 to your employees electronically. IRS Forms W-2 must be issued by the same due date as the paper IRS Forms W-2. See Pub. 15-A, Employer's Supplemental Tax Guide, for additional information.

Due Date for Electronic Filers – If you file your 2022 Form W-2 and Form W-3 with the Social Security Administration (SSA) electronically or in paper form, the due date is January 31, 2023. You must e-file if you are required to file 250 or more Forms W-2 or W-2c unless a waiver is granted by the Internal Revenue Service. 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 January 31, 2023.

Form 944 –The rate of social security tax on taxable wages, including qualified sick leave wages and qualified family leave wages paid in 2022 for leave taken after March 31, 2021, and before October 1, 2021, is 6.2% each for the employer and employee or 12.4% for both. Qualified sick leave wages and qualified family leave wages paid in 2022 for leave taken after March 31, 2020, and before April 1, 2021, aren't subject to the employer share of social security tax; therefore, the tax rate on these wages is 6.2%. The social security wage base limit is $147,000.

The credit for qualified sick and family leave wages, enacted under the Families First Coronavirus Response Act (FFCRA) and amended and extended by the COVID-related Tax Relief Act of 2020, for leave taken after March 31, 2020, and before April 1, 2021, and the credit for qualified sick and family leave wages for leave taken after March 31, 2021, and before October 1, 2021, have expired. However, employers that pay qualified sick and family leave wages in 2022 for leave taken after March 31, 2020, and before October 1, 2021, are eligible to claim a credit on Form 944 filed for 2022.

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 or 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 $2,000 or more for 2021 and 2022, respectively. FICA is due on all wages, including the first $1,999 for 2021 and for 2022 of the election workers wages if they exceed $2,000 for 2021 and 2022. For 2023, this will increase to $2,200. 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

Household Workers – Social Security and Medicare taxes apply to wages of household workers who are paid $2,300 and $2,400 or more for 2021 and 2022, respectively. For 2023, this will increase to $2,600.

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. The new Form W-2 should indicate "Reissued Statement" on the new employee copies.

Box 1 – Wages

- Include total taxable wages, 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 $147,000 for 2022.
- Total should not be more than $160,200 for 2023.

Box 4 – Social security tax withheld

- 6.20% of amount reported in Box 3, not to exceed $9,114 for 2022 and $9,932 for 2023.

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 – The total of boxes 3 and 7 should not exceed the maximum social security wage base for that year.

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 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 11. 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 a 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.

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 January 31, 2023. A 30-day extension to file may be requested using Form 8809 by January 31, 2023 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. 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 and at least $10 in royalties or broker payments in lieu of dividends or tax-exempt interest.

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). The Form 1099-MISC must be filed with the IRS by January 31, 2023, along with a 1096 transmittal form, when you are reporting nonemployee compensation payments in box 7. Otherwise, file by February 28, 2023 if you are a paper filer and March 31, 2023, for e-filers. The recipient's copy must be postmarked by January 31, 2023.

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

Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301

Form 1099-MISC has been redesigned with some changes for 2022 in reporting of income and the form's box numbers.

D. PARTNERSHIPS AND CORPORATIONS

LLC Filing fee

For tax years ending 2022, 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 Due Dates for December 31 Year-End Filers

- Partnerships-March 15, 2023, with a possible six-month extension to September 15, 2023
- C Corporations-April 18, 2023, with a possible six-month extension to October 16, 2023
- S Corporations-March 15, 2023, with a possible six-month extension to September 15, 2023

2023 quarterly estimated tax payment deadlines

If you are self-employed or receive any form of income that requires you to pay estimated taxes, here are the estimated tax due dates for 2023:

- April 15, 2023 – Deadline for 2023 Q1 estimated tax payments
- June 15, 2023 – Deadline for 2023 Q2 estimated tax payments
- Sept. 15, 2023 – Deadline for 2023 Q3 estimated tax payments
- Jan. 15, 2024 – Deadline for 2023 Q4 estimated tax payments

E. 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:

Annual monthly cost per $1,000 of coverage over $50,000 (for 1 month)

Age	Cost
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 above	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. This amount is included in the employee's gross income.

Commuting Rule

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. 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.

Control Employee

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 2022, the level is $120,000 for board members or officers, and $245,000 for other employees. For 2023, the level is $130,000 for board members or officers, and $265,000 for other employees. An employer can choose an alternative definition of a control employee as any highly compensated employee. A highly

compensated employee for 2022 is anyone who either received more than $135,000 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 $135,000 in pay the preceding year) if the employee was not also in the top 20% of earners with the organization for the preceding year. In 2023, this will increase to 150,000. 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. Employee Benefits Accountable and Unaccountable Plans (See IRS Publication 463)

Reimbursements

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.

Non Accountable Plan

The amount paid to an employee for travel and other necessary expenses of your business is treated as supplemental wages and is subject to income tax withholding, FICA & FUTA if the following conditions exist:

- Your employee is not required to or does not substantiate timely those expenses to you with receipts or other documentation.

- You advance an amount to your employee for business expenses and your employee does not return timely any amounts not used.
- You advance or pay an amount to your employee without regard for anticipated or incurred business expenses.

Accountable Plans

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.

4. Per Diem Allowance

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, the amount in excess is included in gross income of the employee.

5. Cell Phones

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.

III. IRS MILEAGE RATES

The amounts for the various deductible costs for use of a car will be effective January 1, 2023 and are as follows:

- The standard mileage rate for the cost of operating a car will increase to 65.5 cents per mile for all business miles driven. The previous rate was 62.5 cents for 2022.
- 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 increase to 22 cents per mile. The previous rate was 18 cents for 2022.
- The moving expense deduction is available only to active-duty members of the Armed Forces, at 22 cents per mile for 2023. The previous rate was 18 cents per mile for 2022.

IV. NOT-FOR-PROFIT UPDATE

The Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU), No. 2016-02 *Leases (Topic 842)*, originally issued in February 2016, became effective for all not-for-profit organizations beginning in 2022. Most recently, the FASB granted a delay for implementation of the *Leases* Standard through issuance of ASU No. 2020-05 in June 2020. The deferment applied to both public and nonpublic not-for-profits.

Under ASU No. 2020-05, the final extended implementation dates for the requirements contained in the *Leases* Standard for public not-for-profits and all others are as follows:

A public not-for-profit (NFP) is one that has issued (or is a conduit bond obligor for) securities that are traded, listed, or quoted on an exchange or an over-the-counter market. Public NFPs that have not yet issued financial statements or made financial statements available for issuance as of June 30, 2020, shall apply the requirements contained in the *Leases* standard for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years.

Nonpublic (all others that are not public) NFPs shall apply the Standard's requirements for financial statements issued for fiscal years *beginning after* December 15, 2021, and interim periods within fiscal years *beginning after* December 15, 2021. In other words, the *Leases* Standard is now in effect for all nonpublic NFPs with calendar year ends and becomes effective for NFPs with fiscal year ends that begin in 2022. Earlier application is permitted for both public and nonpublic not-for-profits.

The requirements under the *Leases* Standard can be implemented in one of two ways:

- Under the Modified Retrospective Approach, the required changes must be applied to the earliest period presented, including to comparative financial statements when they are included, *or*

- As a Cumulative Effect Adjustment to the net assets at the beginning of the year of adoption. Comparative periods need not be changed.

The main provisions of the ASU are as follows:

- Applies to leases with a term of more than 12 months.
- Retains similar previous requirements under Generally Accepted Accounting Principles (GAAP) for recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee.
- Continues to differentiate between finance leases and operating leases. However, the principal difference from previous guidance is that the lease assets and lease liabilities arising from operating leases should be recognized in the statement of financial position.

For <u>finance</u> leases, a lessee is required to do the following:

- Recognize a "right of use" asset and a lease liability, initially measured at the present value of the lease payments in the statement of financial position.
- Recognize interest on the lease liability separately from amortization of the right of use asset in the statement of activities
- 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, a lessee is required to do the following:

- Recognize a "right of use" asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position.
- 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.
- Classify all cash payments within operating activities in the statement of cash flows.

The accounting applied by a lessor is largely unchanged from that applied under previous GAAP.

Implementation of the *Leases* Standard requires not-for-profits to be able to distinguish between operating and financing leases, understand discount rates to be used for present value calculations, and how to treat initial lease costs and cash incentives before recording the appropriate transactions to their financial records.

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

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. INDIVIDUALS AND FAMILIES

1. Open Enrollment for the Health Insurance Marketplace began in 2013. The enrollment period for 2023 remains the same as in previous years and is from November 1, 2022 through December 15, 2022. The last day to enroll or change a 2023 health plan is January 15, 2023. Eligible individuals and families can enroll or gather information at www.HealthCare.gov.

2. Health Savings Account ("HSA")

   a. The annual contribution limit for HSA plans for 2022 is $3,650 for individuals and $7,300 for an individual with family coverage. These contributions are not subject to tax. The contribution limits will be increasing for 2023 to $3,850 for individuals and $7,750 for an individual with family coverage.

   b. HSA holders 55 and older, can save an additional $1,000 both in 2022 and 2023 in addition to the limits stated above.

   c. High deductible health plans allow for an annual deductible that is no less than $1,400 for self-only coverage or $2,800 for family coverage for 2022. Annual deductible amounts for 2023 are $1,500 for self-only coverage or $3,000 for family coverage.

d. Annual out of pocket costs for 2022 cannot exceed $7,050 for self-only coverage or $14,100 for family coverage. Annual out of pocket costs for 2023 cannot exceed $7,500 and $15,000.

3. Flexible Spending Arrangement ("FSA")

a. The annual contribution limit for an FSA for 2022 is $2,850 and increases to $3,050 in 2023. 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:

- 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.

- arryover – FSA plans can allow participants to roll forward up to $570 in 2022 and $610 in 2023 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 these thresholds will be forfeited.

c. Enrollment in both an FSA and HSA for 2023 is not permitted. However, if you have an HSA, you can open a Limited Purpose Flexible Spending Account (LPFSA), which is only utilized for vision and dental expenses.

d. When you change your employer, you lose your FSA but can still retain your HSA.

4. 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 January 31st following the year of coverage.
b. Form 1095-B – Health Coverage: Insurers and self-funded plans must provide this form to each enrollee.
c. Form 1095-C – Employer-Provided Health Insurance Offer and Coverage: Applicable large employees must provide this form to each enrollee.
d. Form 8962 – Premium Tax Credit
e. Form 8965 – Health Coverage Exemptions

B. EMPLOYERS

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 2019 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. Employers that self-insure may be required to pay a fee to fund the Patient Centered Outcomes Research Fund, see https://www.irs.gov/affordable-care-act/patient-centered-outcomes-research-trust-fund-fee-questions-and-answers for more information.

5. Continuing in 2022 and 2023, 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. 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.

VII. 1040 AND NEW YORK STATE CONSIDERATIONS

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

A. TAX RATE BRACKETS

In 2022, the 37% tax bracket applies to taxable income that exceeds $539,900 for single and head of household ("HOH") taxpayers, $647,850 for married individuals filing jointly ("MFJ") and surviving spouse, and $323,925 for married individuals filing separate ("MFS"). All of the other tax brackets have been adjusted for inflation.

In 2023, the 37% tax bracket applies to taxable income that exceeds $578,125 for single and head of household ("HOH") taxpayers, $693,750 for married individuals filing jointly ("MFJ") and surviving spouse, and $346,875 for MFS.

In 2022 and continuing for 2023, workers 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 0.9%. 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 2022 income tax return.

B. PREFERENTIAL RATES FOR CAPITAL GAINS AND QUALIFIED DIVIDENDS

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 $459,750, MFJ taxpayers with taxable income over $517,200, MFS taxpayers with taxable income over $258,600, and for head of household taxpayers with income over $488,500.

There are a few other exceptions where capital gains may be taxed at rates greater than 20%:

1. The taxable part of a gain from selling section 1202 qualified small business stock is taxed at a maximum 28% rate.
2. Net capital gains from selling collectibles (such as coins or art) are taxed at a maximum 28% rate.
3. The portion of any unrecaptured section 1250 gain from selling section 1250 real property is taxed at a maximum 25% rate.

C. NET INVESTMENT INCOME TAX

The net investment income tax ("NIIT") is still applicable for 2022. 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. PERSONAL EXEMPTIONS AND ITEMIZED DEDUCTIONS

The personal exemption continues to be eliminated for 2022. This elimination modifies the level of income which a taxpayer must file a return. Also continuing for 2022 for most taxpayers, the filing requirement will be based solely upon the standard deduction available to them.

Following are the 2022 changes to itemized deductions:

- Deduction for state and local income taxes, personal property taxes and real estate taxes will be limited to $10,000 in total.
- Mortgage interest is allowed on new mortgages up to $750,000 ($375,000 if married filing separately). 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 2022 as qualified residence interest. Adjusted Gross Income must be less than $109,000 if you want to deduct your mortgage insurance premiums or $54,500 if you are married and filing separately.
- Charitable donations of cash will be limited to 60% of AGI in 2022 and 2023.
- All miscellaneous deductions formerly subject to the 2% threshold will no longer be 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 with regard to 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.

E. HOMEOWNER TAX RELIEF CREDIT

The homeowner tax rebate credit is a one-year program providing direct property tax relief to eligible homeowners in 2022. The amount of your rebate credit will depend on where your home is located, how much your income is, and whether you receive an Enhanced STAR or Basic STAR exemption amount.

To be eligible, you must have:

- qualified for a 2022 STAR credit or exemption;
- had income that was less than or equal to $250,000 for the 2020 income tax year; and
- a school tax liability for the 2022-2023 school year that is more than your 2022 STAR benefit.

F. PATIENT PROTECTION AND AFFORDABLE CARE ACT

Individuals and families are still able to acquire coverage through the Patient Protection and Affordable Care Act marketplace. Individuals with marketplace coverage may be entitled to the §36B premium assistance tax credit when filing their 2022 tax return. If a taxpayer received an advanced payment of the credit, they are required to file a 2022 Form 8962.

For tax years 2021 and 2022, the American Rescue Plan Act of 2021 (ARPA) temporarily expanded eligibility for the §36B premium assistance tax credit by eliminating the rule that a taxpayer with household income above 400% of the federal poverty line cannot qualify for a premium tax credit.

Taxpayers should receive one of the following forms which pertain to healthcare coverage and these forms should be utilized when filing your 2022 returns:

- Form 1095-A Health Insurance Marketplace Statement
- Form 1095-B Health Coverage for people whose insurance is derived from a source other than the Marketplaces.
- Form 1095-C Employer-Provided Health Insurance Offer and Coverage

G. STANDARD DEDUCTIONS

The standard deduction for 2022 increases to $25,900 for MFJ and surviving spouse, $19,400 for head of household, or $12,950 for all other taxpayers. The additional standard deduction for being 65 or older or blind is $1,750 if single or head of household ($3,500 if 65 and blind). If MFJ, the additional standard deduction is $1,400 if one spouse is 65 or older or blind, $2,800 if both spouses are at least 65 (or one is 65 and blind).

The standard deduction for married couples filing jointly for tax year 2023 rises to $27,700 up $1,800 from the prior year. For single taxpayers and married individuals filing separately, the standard deduction rises to $13,850 for 2023, up $900, and for heads of households, the standard deduction will be $20,800 for tax year 2023, up $1,400 from the amount for tax year 2022.

H. DEDUCTION FLOOR FOR MEDICAL EXPENSES

Effective for 2022 and 2023, the floor for deducting medical expenses as an itemized deduction remains at 7.5% of AGI for all taxpayers.

I. SOCIAL SECURITY WAGE BASE

For 2022, the tax rate on the employee portion of social security is 6.2% on wages up to $147,000; therefore, social security tax withholdings will not top $9,114. Medicare tax of 1.45% is withheld from all wages regardless of amount. For 2023, the social security wage base will be increased to $160,200.

Self-employment taxes of 15.3% apply to earnings up to $147,000 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 $147,000, 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 $18,228.

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

J. IRA AND ROTH IRA CONTRIBUTION PHASE-OUT

For 2022, the contribution limit for traditional IRAs and Roth IRAs is $6,000 or $7,000 for those age 50 or older. The contribution deduction for traditional IRAs is phased-out for active plan participants with MAGI between $68,000 and $78,000 for a single person or head of household, or between $109,000 and $129,000 for MFJ. The phase-out range is $204,000-$214,000 for a spouse who is not an active plan participant and who files jointly with a spouse who is an active plan participant.

The annual IRA contribution limits for 2023 are $6,500 or your taxable income, whichever is lower. If you are 50 or older by the end of 2023, the contribution limit is $7,500.
Retirement savings contributions credit.
For 2022, the adjusted gross income limitations have increased from $66,000 to $68,000 for married filing jointly filers; from $49,500 to $51,000 for head of household filers; and from $33,000 to $34,000 for single, married filing separately, or qualifying widow(er) with dependent child filers. The limit on elective deferrals increased to $20,500 in 2022 and $22,500 in 2023.

K. IRA CHARITABLE CONTRIBUTION

IRA owners must be age 70 1/2 or older to make a tax-free charitable contribution. Those who meet the age requirement can transfer up to $100,000 per year directly from an IRA to an eligible charity without paying income tax on the transaction. For a married couple, if both spouses are age 70½ or over and both have IRAs, each spouse can exclude up to $100,000 for a total of up to $200,000 per year. Charitable contributions can only be made from IRAs, not 401(k)s or similar types of retirement accounts.

SECURE 2.0 Act indexes the $100,000 annual exclusion limit for inflation beginning in 2024 and provides a second option to take advantage of the exclusion beginning in 2023 by permitting a taxpayer to make a one-time $50,000 distribution directly from an IRA or IRAs to a charitable remainder trust or a charitable annuity and make a one-time election to treat the contributions as if they were qualified charitable distributions made directly to a charitable entity.

L. 529 PLANS

Continuing for 2022, all 529 plan savings may be used toward elementary or secondary public, private or religious school tuition. 529 plans do not have annual contribution limits.

However, contributions to a 529 plan are considered completed gifts for federal tax purposes, and in 2022 up to $16,000 per donor ($17,000 in 2023), per beneficiary qualifies for the annual gift tax exclusion.

M. DEPRECIATION

The maximum §179 deduction allowed is $1,080,000 for qualifying property placed in service in 2022, subject to a limitation based upon the qualified assets placed into service. For 2022, this threshold amount is $2,700,000. The §179 deduction also imposes an income limitation upon the deduction.

Maximum §179 deduction allowed is $1,160,000 for qualifying property placed in service in 2023, subject to a limitation based upon the qualified assets placed into service. For 2023, this threshold amount is $2,890,000.

Bonus depreciation allows businesses to deduct a large percentage of the cost of eligible purchases the year they acquire them, rather than depreciating them over a period of years. In 2022, bonus depreciation allows for 100% upfront deductibility of depreciation; this depreciates 20% in each subsequent year until its final year in 2026. The maximum amount of bonus depreciation you can take on an eligible asset is 80% for 2023.

N. IRS MILEAGE ALLOWANCE

The IRS standard business mileage rate for 2022 is 62.5 cents a mile. The medical and moving expense mileage rate deduction is 22 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.

O. ALTERNATIVE MINIMUM TAX

Alternative minimum tax ("AMT") exemptions are increased to $118,100 for MFJ and surviving spouse, $75,900 for single and head of household, $26,500 for estates and trusts, and $59,050 for MFS. The 2022 AMT exemptions phase-out begins at $1,079,800 for MFJ and surviving spouse, $539,900 for all others.

For 2023, AMT exemptions are increased to $126,500 for MFJ and surviving spouse, $81,300 for single and head of household, $28,400 for estates and trusts, and $63,250 for MFS. The 2023 AMT exemptions phase-out begins at $1,156,300 for MFJ and surviving spouse, $578,150 for all others.

P. 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 (single) and $2,000 (if filing jointly). Credits are not allowed when AGI exceeds

$34,000 for single taxpayers, $51,000 for head of household and $68,000 for MFJ and surviving spouse.

For 2023, credits are not allowed when AGI exceeds $36,500 for single taxpayers, $54,750 for head of household and $73,000 for MFJ and surviving spouse.

Q. ADOPTION CREDIT

For adoptions finalized in 2022, taxpayers will see an increase in the credit and exclusion amounts for the adoption credit. The amount of the credit in 2022 will be $14,980 and $15,950 in 2023.

R. 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 2022 (subject to the 7.5% of AGI floor) is $450 if you are age 40 or younger at the end of 2022; $850 for those age 41 through 50; $1,690 for those age 51 through 60; $4,510 for those age 61 through 70; and $5,640 for those over age 70.

S. FOREIGN EARNED INCOME AND HOUSING EXCLUSIONS

The foreign earned income exclusion for 2022 is $112,000 and $120,000 for 2023 In addition, the housing expense limitation to use in calculating your maximum housing cost exclusion is $15,680 in 2022 and $16,800 in 2023.

T. 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)" must be 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 the 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.

U. FIRST-TIME HOMEBUYER'S CREDIT

The first-time homebuyer's credit, for homes purchased after April 9, 2008 and before January 1, 2009 has to be recaptured over a 15-year period. The repayment period begins with the second taxable year following the year of qualifying home purchase. In general, if your home stops being your main home or you sell it, you may need to repay the credit in full. There are some exceptions to this rule.

V. ANNUAL EXCLUSION FOR GIFTS

With regards to gift taxes, the per-donee exclusion for gifts of present interest is $16,000, for 2022 and $17,000 for 2023.

W. CHILD TAX CREDIT

For 2022, the child tax credit reverts back to its 2020 (pre-pandemic) criteria at $2,000 per child under age 17. The level the credit begins to phase-out for MFJ is $400,000 and $200,000 for all others. Of this amount up to $1,500 is refundable. The child tax credit remains the same for 2023 at $2,000 per child.

X. DEPENDENT CREDIT

Continuing for 2022, 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 the taxpayer's income is more than $200,000. This phaseout begins for married couples filing a joint tax return at $400,000.

Y. GIFT TAX AND ESTATE TAX EXEMPTION

The estate and gift tax exemption for 2022 is $12,060,000.00 (or $24,120,000 for couples). There is another increase in the inherited property and asset basis, and annual gift limits are higher than ever at $16,000.00 (or $32,000.00 for couples) per beneficiary (increasing to $17,000 or $34,000 for couples in 2023).

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 and 40% of the credit is refundable (up to $1,000). For 2022, 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 return for all taxpayers except MFS, who do not qualify for the credit. For 2022, the credit starts to phase out at $160,000 and $18,000 for MFJ filers and $80,000 and $90,000 for all other qualifying taxpayers.

AA. SOLAR CREDITS

The Inflation Reduction Act of 2022 extended the “residential clean energy credit” through 2034 and increased the tax credit to 30% credit for expenditures towards qualified solar electric expenditures including solar water heating expenditures, geothermal heat pump expenditures, small wind energy property expenditures. The federal solar tax credit, also known as the solar Investment Tax Credit (ITC), allows you to receive a deduction on your federal taxes equal to 30% of the cost of a *home solar installation* as a tax credit until 2032.

After that, the solar tax credit steps down to 26% in 2033 and then 22% in 2034, expiring thereafter.

BB. IDENTITY THEFT ISSUES

The IRS has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers.

The Security Summit consists of IRS, state tax agencies and the tax community, including tax preparation firms, software developers, payroll and tax financial product processors, tax professional organizations and financial institutions. Total membership includes 42 state agencies and 20 industry offices in addition to the IRS.

Publication 5027, Identity Theft Information for Taxpayers, and Publication 4524, Security Awareness for Taxpayers, are accessible on the IRS website for further information on how to protect yourself from identity theft and steps to take if your identity has been stolen.

The IRS will continue to have available Form 14039, *Identity Theft Affidavit* that taxpayers who are actual or potential victims can file. This form will allow the IRS to flag the account for review of any suspicious activity.

A new pre-screening procedure for suspicious returns has been adopted by the IRS. If any suspicion arises, the IRS will send a Letter 5071C or Notice CP01B to the taxpayer requesting that they visit https://www.irs.gov/identity-theft-fraud-scams/idverify or call 1-800-830-5084 within 30 days to verify that the tax return filed was the taxpayers.

If your identity has been stolen and a fraudulent return filed in your name, the IRS will create an Identity Protection Personal Identification Number (IP PIN) to prevent any further fraudulent activity from occurring. This IP PIN is a six-digit number used to file a taxpayer's federal tax return. In addition, the IRS will also invite taxpayers where the IRS has identified certain indicators of identity theft on their returns to voluntarily opt into the IP PIN program.

CC. NYS DRIVER LICENSE REQUIREMENT

Continuing for the tax year 2022, New York State is requiring taxpayers to provide driver license or state-issued ID (non-driver ID) information for their electronically–filed personal income tax returns as an additional verification device to deter fraud along with an upgrade on their protocols to better protect the taxpayer's information.

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

At December 29, 2022, the Consolidated Appropriations Act of 2023 (HR 2617) was signed into law. The Act includes important provisions affecting retirement savings plans which are intended to build upon the 2019 SECURE Act. These provisions, collectively referred to as SECURE 2.0, offer many new benefits to employers and employees which are designed to

make it more attractive for employers to offer retirement plans and to improve retirement outcomes for employees.

New changes include the following:

Required Automatic Enrollment and Automatic Escalation
SECURE 2.0 requires plans to include provisions for automatic enrollment, starting at an amount not less than 3% of compensation nor more than 10% of compensation, with automatic escalation of 1% per year until the deferral rate reaches an amount of at least 10% of compensation but not more than 15% of compensation. All current 401(k) and 403(b) plans (in existence before the date of enactment) are grandfathered and need not include this provision. In addition, there are exceptions for small businesses with 10 or fewer employees, new businesses (less than 3 years), church plans, and governmental plans. Effective for plan years beginning after December 31, 2024.

Participation of Long-Term Part-Time Employees
The 2019 SECURE Act changed the rule to require eligibility for part-time employees who complete at least 500 hours of service in each of 3 consecutive years, although that eligibility can be limited to the 401(k) component of the plan (i.e., no employer contributions are required). SECURE 2.0 reduces the 3 year requirement to 2 years. It also extends the requirement to apply to 403(b) plans that are subject to ERISA. Effective for plan years beginning after December 31, 2024.

Retirement Plan Tax Credits for Small Employers
Under changes made by the 2019 SECURE Act, an employer with not more than 100 employees that adopted a new retirement plan could enjoy an annual tax credit for up to 3 years, equal to the lesser of 50% of the cost of establishing the plan or $5,000.

SECURE 2.0 increases the percentage from 50% to 100% for employers with not more than 50 employees, and also establishes a tax credit for plan contributions made by small employers to a new plan. The credit is equal to a percentage of the amount contributed by the employer up to a cap of $1,000 per employee (not counting contributions for employees with compensation in excess of $100,000, as indexed). The percentage is 100% for each of the first two years, 75% for the third year, 50% for the fourth year, and 25% for the fifth year. Effective for tax years beginning after December 31, 2022.

De Minimis Incentives to Improve Retirement Plan Participation
SECURE 2.0 now allows employers to offer “de minimis financial incentives,” such as gift cards in modest amounts, to encourage plan contributions by employees. Effective for tax years beginning after December 31, 2022.

Emergency Savings Accounts
Plans will be permitted to include “emergency savings accounts” funded by after-tax Roth contributions made by Non-Highly Compensated Employees. Balances in these accounts must be available for distribution at least once per month. Contributions to the account cannot be made to the extent that they would cause the account balance to exceed $2,500 (adjusted for inflation). Employee contributions to the account must be eligible for

matching contributions at the same rate applicable to other employee contributions. Effective for plan years beginning after December 31, 2023.

Withdrawals for Emergency Expenses:
Generally, withdrawals from retirement accounts prior to age 59½ are subject to a 10% penalty, in addition to ordinary income tax, without regard to the reason for the withdrawal. Going forward, one emergency expense withdrawal up to a maximum of $1,000 will be permitted each year. The participant must be permitted to repay the withdrawal to the plan within the following three years. Additional emergency expense withdrawals within the three-year period are limited if repayment (or equivalent contributions) have not been made. Effective for withdrawals taken after December 31, 2023.

Retirement Savings
Employees who change jobs and/or move often lose track of benefits in employer-sponsored retirement plans, and plan administrators struggle to locate them to pay the benefits to which they are entitled. SECURE 2.0 directs the establishment of an online searchable database that will allow plan participants (and beneficiaries of deceased participants) to search for contact information for administrators of plans in which they might have an interest. Plan administrators will be required to share information with the Department of Labor to be included in the data base. Effective within 2 years of enactment of SECURE 2.0 (i.e., by the end of 2024).

Increased Limits on Catch-Up Contributions for Ages 60 – 63
In addition to the regular 401(k) deferral limit ($22,500 in 2023), employees who have reached age 50 are permitted to make "catch-up" contributions to 401(k) plans, up to an additional limit ($7,500 in 2023). SECURE 2.0 increases the catch-up contribution limit to the greater of $10,000 or 150% of the regular catch-up limit for employees who attain ages 60, 61, 62, or 63 during the year. (At ages 64 and older, the regular catch-up limit will remain available.) Effective for tax years beginning after December 31, 2024 (with adjustments for inflation for years after 2025).

Catch-Up Contributions Required to be After-Tax Roth
In addition to the regular 401(k) deferral limit ($22,500 in 2023), employees who have reached age 50 are permitted to make "catch-up" contributions to 401(k) plans, up to an additional amount ($7,500 in 2023). Currently, both regular and catch-up contributions can be made on either a traditional pre-tax basis or on an after-tax Roth basis, as elected by the employee. Going forward, all catch-up contributions by employees with annual compensation in excess of $145,000 (as indexed) will be required to be made on an after-tax Roth basis. Employees with compensation below the threshold will still be permitted to make catch-up contributions on a pre-tax basis. Effective for tax years beginning after December 31, 2023.

Matching and Nonelective Contributions Permitted to be After-Tax Roth
Plans will be permitted to allow employees to elect to designate the matching and nonelective contributions allocated to their accounts to be after-tax Roth contributions. This provision is optional; employers who wish to avoid the additional administrative

complication will be permitted to continue to make all employer contributions on a pre-tax basis. Also, the new rule only applies to contributions that are fully vested when made. Effective upon enactment of SECURE 2.0.

Matching Contributions for Student Loan Payments:
Employers will be permitted to make matching contributions to 401(k) and 403(b) plans based on student loan payments made by employees, essentially treating such payments as though they were employee contributions to the plan, and such matching contributions will be counted for purposes of nondiscrimination testing purposes. Effective for plan years beginning after December 31, 2023.

Mandatory Cash-Out Threshold Increased to $7,000; Automatic Portability:
SECURE 2.0 raises the mandatory distribution threshold from $5,000 to $7,000. In addition, an amount transferred to an automatic rollover IRA can automatically be transferred to the retirement plan maintained by the employee's new employer without any action required from the employee. Effective for distributions made after December 31, 2023.

Further Increase in Age for Required Minimum Distributions:
Participants in retirement plans (including IRAs as well as employer-sponsored plans) had to commence required minimum distributions (RMDs) at age 70½, although non-owner employees were permitted to postpone RMDs from employer-sponsored plans until actual retirement. The 2019 SECURE Act increased the applicable age to age 72, effective for individuals who had not reached age 70½ by December 31, 2019. SECURE 2.0 further increases the RMD age to age 73 effective January 1, 2023 and then age 75 effective January 1, 2033.

VII. CORPORATE TAX CHANGES:

Major corporate tax changes took effect for years beginning on or after January 1, 2019 and continue through December 31, 2022. The following is a summary of some of the key changes:

- Mileage rate for business miles driven is 58.5 cents per mile from January 1, 2022 through June 30, 2022, which increased to 62.5 cents per mile from July 1, 2022 through December 31, 2022.
- Section 179 expense deduction increases to a maximum deduction of $1,080,000 of the first $2,700,000 of qualifying equipment placed in service during the current tax year. This amount is indexed to inflation for tax years after 2018. The deduction was enhanced under the TCJA to include improvements to nonresidential qualified real property such as roofs, fire protection, and alarm systems and security systems, and heating, ventilation, and air-conditioning systems. Also, of note is that costs associated with the purchase of any sport utility vehicle, treated as a Section 179 expense, cannot exceed $27,000.
- Businesses are allowed to immediately deduct 100% of the cost of eligible property placed in service for bonus depreciation after September 27, 2017, and before January 1, 2023, after which it will be phased downward over a four-year period:

80% in 2023, 60% in 2024, 40% in 2025, 20% in 2026, and 0% in 2027 and years beyond.

- Eligible taxpayers are able to deduct up to 20 percent of certain business income from qualified domestic businesses, as well as certain dividends. To be eligible for the qualified business income deduction business income must not exceed a certain dollar amount. In 2022, these threshold amounts are $170,050 for single and head of household filers and $340,100 for married taxpayers filing joint returns.
- The *Tax Cuts and Jobs Act* enacted in 2017 contained a provision whereby beginning January 1, 2022, costs incurred for R&D activities will no longer be immediately deductible. Instead, the costs will have to be capitalized and amortized over 5 or 15 years. Costs related to research activities performed in the U.S. will be recovered over a 5-year amortization period, while those related to research activities performed outside the U.S. will be recovered over a 15-year period.

  To avoid this modification to taxable income, taxpayers can make an election under Section 280C(c)(2) on a timely filed tax return to reduce the credit by 21 percent, the maximum corporate tax rate. The capitalization and amortization requirement, however, will prevent taxpayers from having Section 41 credits that exceed the allowable deduction, making a Section 280C(c)(2) election unfavorable.

- Extended through 2025 (The Consolidated Appropriations Act, 2021), the Work Opportunity Tax Credit is available for employers who hire long-term unemployed individuals (unemployed for 27 weeks or more) and is generally equal to 40 percent of the first $6,000 of wages paid to a new hire.

- For taxable years beginning in 2022, the dollar amount of average wages is $28,700 ($27,800 in 2021). This amount is used for limiting the small employer's health insurance credit and for determining who is an eligible small employer for purposes of the credit.
- Taxpayers who incur food and beverage expenses associated with operating a trade or business are able to deduct 100 percent (50 percent for tax years 2018-2020) of these expenses for tax years 2021 and 2022 (The Consolidated Appropriations Act, 2021) as long as the meal is provided by a restaurant.
- If you provide transportation fringe benefits to your employees in 2022, the maximum monthly limitation for transportation in a commuter highway vehicle as well as any transit pass is $280. The monthly limitation for qualified parking is $280.

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.