

The Trusted Professional

Vol. 14 No. 2 • February 1, 2011

The Newspaper of the New York State Society of Certified Public Accountants

www.nysscpa.org

New Governor Addresses Budget Issues in First State of the State Address

Cuomo Speaks to Upstate 'Economic Crisis'

By GABE KAHN

Trusted Professional Staff

The state's \$10 billion deficit—which is expected to grow to \$14 billion in 2012 and \$17 billion in 2013—must be dealt with, Gov. Andrew M. Cuomo said in his first State of the State address on Jan. 5, noting that this will require a significant shift in how the state budgets for expenses.

"The state of New York spends too much money, it is that blunt and it is that simple," he said. "Our spending has far exceeded the rate of inflation. From 1994 to 2009, inflation was about 2.7 percent per year; Medicaid went up over 5 percent per year

and education went up over 6 percent per year. We just can't afford those rates of increase." He added that during the same time period, state spending outpaced income growth.

Cuomo said he thinks the state must begin with a wage freeze and "an emergency financial plan to stabilize our finances," as well as a new way to approach the state's fiscal plan.

Those changes also begin with adjustments to the state's budgeting process. Rather than trimming expenses or through line item reductions, Cuomo said, "We are going to have to reinvent government. We are going to have to reorganize the agencies."

He talked about transforming the state's budget process and described as "flashpoints" three budget-related issues: education funding, Medicaid, and state and local mandates.

In terms of education funding, Cuomo suggests the creation of two competitive funds that reward performance—one, a school performance fund that would provide \$250 million for districts that increase classroom performance; the other, \$250 million in award money that would be split and dispersed to districts that find administrative savings through efficiencies and shared services.

Cuomo also promised to fix inefficiencies with Medicaid.

To this end, Cuomo said a Medicaid Redesign Team began on Jan. 7 to find efficiencies in the program and is attempting to meet targeted Medicaid cuts without reducing the reimbursement rate or reducing services.

Cuomo also said a group will be focused on proposing the elimination of all "unnecessary state mandates" and proposed a "consolidation bonus" for municipalities that would reward local governments that share or merge services.

Upstate in 'Crisis'

Cuomo spoke about issues affecting all of New York state, but took time to

(Continues on page 18)

WHAT'S INSIDE

NYSSCPA Board Seeks FAE Trustee Candidates—Page 2.

Red Flag Repeal—CPAs exempt from identity theft protection rules, page 3.

CPAs in Politics—Two NYSSCPA members discuss their congressional campaigns, page 4.

Conference Coverage—Practice Management, page 6.

NYSSCPA Comments—PCAOB audit supervision proposal, page 7.

Tax Form Update—New box on IT-201 will determine NYC residency, page 8.

IRS Guidance Clarifies PTIN Rules for Signers Only—Page 9.

New Members—Page 10.

Auditing Service Organizations—Guidance split into two standards, page 12.

Conference Coverage—Exempt Organizations, page 13.

Ernst & Young Sued Over Lehman Transactions—Page 15.

Disciplinary Matters—Page 16.

Chapter Newsletters

Pages 19-24

Chapters in this issue include:

Buffalo

Staten Island

Utica

Manhattan/Bronx

Suffolk

Post-Election Tax Planning Conference Addresses IRS Focus on Employment Tax Audits

Estate Tax Concerns Also Discussed at Conference

By CHRIS GAETANO

Trusted Professional Staff

Now more than ever, businesses cannot afford to be cavalier about how their workers are classified, as the distinction between employee and independent contractor is an area of scrutiny—and possible revenue raising—for the IRS, according to NYSSCPA Employee Benefits Committee member **Avery E. Neumark**, who spoke at the Post-Election Tax Planning Conference on Dec. 6.

Employment taxes is an area Neumark said is "ripe for underreporting." Some \$14 billion worth of Federal Insurance Contributions Act (FICA) taxes are underreported, while about \$1 billion worth of unemployment taxes are estimated to be underreported, according to Neumark. The IRS believes that self-employment taxes are underreported by about \$39 billion, he said.

The IRS is implementing a program that will result in approximately 6,000 audits of businesses over the next three years. This initiative—the IRS's latest National Research Program (NRP)—was launched in



Panelist Blanche L. Christerson addresses an attendee's question at the Post-Election Tax Planning Conference on Dec. 6, as panelist Daniel L. Daniels looks on.

2009 as a way to both collect revenue and help the IRS better understand recurring noncompliance, the agency said. NRP focuses specifically on employment taxes, with the IRS allocating between 200 to 300 of its most experienced auditors to this project, according to Neumark.

Employers, he said, may be trying to save money in these troubled economic times by employing independent contractors but telling the government that they are employees. By doing so, they end up underpaying on federal employment taxes and state unemployment taxes, Neumark

(Continues on page 17)

Post-Election Tax Planning Conference Addresses IRS Focus on Employment Tax Audits

Estate Tax Concerns Also Discussed at Conference

(Continued from page 1)

said. The government is seeking to turn these misclassifications into revenue through audits, he said.

"They're really going to look into a lot of issues much deeper than in the past," Neumark said.

"Look carefully. Do self-audits to make sure everything is in place before you get a letter," Neumark said.

A company might also want to define for itself who is a true employee and who is an independent contractor. However, Neumark said, this distinction is not always easy to make. There are many different tests used by many different government agencies to differentiate between the two, but they all use different standards and, therefore, can come up with different results, he said. The Department of Labor, the IRS, the National Labor Relations Board and the various state-level enforcement agencies, for example, all use different tests.

While there are many differences among the tests, there are some commonalities. Neumark said that many tests come down to whether the individual is under the "control" of the company. New York state courts, he said, have focused on whether the evidence demonstrates whether the

employer exerts control over the results that are produced by the worker or the means used to achieve these results. An employee is generally under the employer's control; an independent contractor is not.

However, "there is no one uniform standard for defining who is an employee," said Neumark. "That is one of the problems with this whole picture."

Neumark noted that a Government Accountability Office report from August 2009 urged the federal government to streamline the test for who is an employee and who is an independent contractor.

When a company is the target of a special audit, the government won't simply be reviewing the business's Form 941, Employer's Quarterly Federal Tax Return, and Form 940, Employer's Annual Federal Unemployment Tax Return. The IRS will also be examining the compensation that generated the withholding and then audit the various compensatory components to look for reporting compliance as well, Neumark said.

"They're going to look into some very detailed executive compensation issues," Neumark said. These include not only cash payments, but fringe benefits, golden para-

chute arrangements and the reasonableness of compensation.

To prepare for one of these audits, Neumark said that businesses would be well advised to update their processes and procedures prior to the exam, as well as consider voluntary disclosures where applicable. They should also verify their payroll system's taxability and tax rates, deploy appropriate audit defenses, seek penalty abatement and adjust employment tax returns upon the discovery of any errors.

The Estate Tax

CPAs involved in estate planning contended with a great deal of uncertainty throughout 2010 over not knowing what, exactly, would happen with the estate tax at the beginning of the new year. A compromise agreement signed into law on Dec. 17 resulted in a new 35 percent estate tax on estates valued at \$5 million or more—an extension of the Bush-era tax cuts. If no further action had been taken by Congress, the estate tax would have returned at the beginning of the year at a rate of 55 percent on estates valued at \$1 million or more.

It was surely a year of uncertainty, but according to attorney Daniel L. Daniels, a

trusts and estates partner at Wiggin and Dana LLP and a member of the conference's Financial and Estate Planning Panel, that shouldn't have led to idleness.

"Many clients have used [the uncertainty] as an excuse to sit on the sidelines and do nothing," he said.

Sidney Kess, the conference chair, agreed, saying that some clients didn't want to update their wills when the estate tax issue was still unresolved. The issue, however, is still not entirely settled, as this latest version of the estate tax is set to expire in two years unless Congress votes to extend it before then.

Kess said this was a mistake: "It's so important to have your financial estate plan reviewed ... there is so much you need to do," he said.

One such thing is to make gifts to relatives while gift taxes are still low, according to panelist Jeremiah W. Doyle IV, an estate planning strategist for BNY Mellon's Private Wealth Management Group.

cgaetano@nysscpa.org

Service Organization Auditing: New Standards Will Replace SAS 70

(Continued from page 12)

about what is material to him [or her] as a user. I'm just not sure if this change is really an improvement to the reporting structure or not."

SSAE 16 will be effective beginning on June 15, 2011, but service organizations can choose early adoption, though many will choose to wait, according to Stocker.

"The most likely candidate for early adoption would be if a service organization is having a first-time audit," he said. "If they never had a report under the old standards, why do it one year under the old standards and then change year two to new standards?"

Because the changes aren't significant, Stocker said he thinks the switch won't

involve that much extra work on the part of auditors.

"Obviously, every time you change something you've got to change all your templates and there's an investment involved in doing that, but once you've assimilated to the change, I think it seems like it's only some minor increases," he said.

Fierstein added, "I think that time will tell how much additional work it will be. But if there is additional work, [because of] the information that it provides to the users of those reports, it'll be worth the cost."

gkahn@nysscpa.org

The NYSSCPA Is Available
24 Hours a Day at
www.nysscpa.org