Fust Charles Chambers LLP
CERTIFIED PUBLIC ACCOUNTANTS

FORM 990, 990-T, SCHEDULE H AND COVID TAX RELIEF UPDATE & CONSIDERATIONS

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HEALTHCARE CONFERENCE
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TODAY’S PRESENTERS

Angela M. Franco, CPA

Tax Partner

Angela is a member of the Firm’s Executive Committee and also leads the Firm’s Tax Department, providing oversight of management, allocation of resources and quality control of the Tax Department. In addition, Angela provides income tax planning, advisory and compliance services in both the Commercial and Not-for-Profit sectors.

Angela has served our Healthcare/Not-For-Profit clients with Health System corporate structure projects; applications for recognition of tax exempt status, unrelated business income diagnostics; intermediate sanctions and extensive client advocacy/representation in Internal Revenue Service matters.

Angela is a frequent presenter at Healthcare Financial Management Association (HFMA) events. She is also a member of the American Health Law Association and the American Institute of Certified Public Accountants (AICPA), New York State Society of Certified Public Accountants (NYSSCPA).

Angela is a graduate of the State University of New York at Oswego, is a licensed CPA in New York and Connecticut, and she resides in Manlius, NY.

Deborah L. Stuck, CPA

Tax Principal

Deb provides tax advisory and compliance services to the firm’s tax-exempt organizations. She has close to thirty years of experience providing assistance with tax matters relative to not-for-profit clients that include healthcare systems, colleges and universities, foundation and other exempt organizations.

Deb has support exempt organizations including: Health System corporate reorganizations and structuring of new entities, conversion from a for-profit tax status to tax exempt tax status, structuring unrelated business activities and income tax planning, applications for recognition of tax exempt status and client advocacy with various Federal and state taxing authorities. Additionally, she has been a regular speaker at various training events including those with the Healthcare Financial Management Association (HFMA). She is a member of the American Health Law Association and the American Institute of Certified Public Accountants (AICPA) Tax and Not-for-Profit groups and the New York State Society of Certified Public Accountants (NYSSCPA).

Deb is a graduate of both Russell Sage College and Syracuse University and resides in Wolcott, New York.

TODAY'S PRESENTERS

Mary Ellen Luker, CPA, JD, LLM

Tax Principal

Mary Ellen (Ellie) provides income tax planning, compliance and advisory services to the Firm's not-for-profit and healthcare organizations, as well as proprietorships, partnerships and corporations, and the owners and executives associated with such entities.

Ellie is a New York State CPA and is a member of the American Institute of Certified Public Accountants and the New York State Society of Certified Public Accountants (NYSSCPA). She is also admitted to the New York and Massachusetts Bar. She received her JD from Suffolk University Law School and her LLM in Taxation from Boston University Law School. In addition, she has experience in not-for-profit operations and governance, as well as Emergency Preparedness Management. Ellie is certified in the National Incident Management System (NIMS) through FEMA.

Ellie is a member of the Board of Directors of Preferred Mutual Insurance Company, UNHS Home Ownership Center of Utica and the DeSales Center Inc. She resides in New Hartford, NY.

Desiree Bennett

Tax Manager

Desiree provides tax advisory and compliance services to the firm's not-for-profit and commercial organizations. She has over 17 years of experience providing tax services to tax-exempt clients including healthcare systems, colleges and universities, foundations and other exempt organizations.

Desiree is a member of the Accounting and Financial Women's Alliance (AFWA).

She is a graduate of Le Moyne College resides in Liverpool, New York.

TODAY’S PRESENTERS

Matthew Fantacone

Tax Manager

Matt provides tax advisory and compliance services to the firm’s not-for-profit and commercial organizations. He has over 7 years of experience providing tax services to tax-exempt clients including healthcare systems, colleges and universities, foundations and other exempt organizations.

Matt is a graduate of Le Moyne College with a B.S. in Accounting and Masters in Business Administration, he resides in Syracuse, New York.

AGENDA – Day 1

- ❑ FORM 990
- ❑ 990-T UPDATES
- ❑ SCHEDULE H
- ❑ COVID RELIEF PROVISIONS FOR NFP

FORM 990

Updates and Considerations

- Overall changes and refinements continue to reflect the IRS Tax Exempt and Government Entities Division's focus on data driven approach to exams
- Updated instructions for mandatory efiling for all organizations with tax years beginning on or after July 2, 2019
- Expanded instructions that provide procedural guidance for adopting a new accounting method and under which circumstances IRS consent must be received
- Failure to file penalties updated for annual increase in gross receipts and maximum penalty, adjusted for inflation (for 2020, $105/day up to $54,000 if gross receipts exceed $1,084,000)
  - ✓ $20/day not to exceed the lesser of $10,500 or 5% of gross receipts without reasonable cause for smaller organizations

FORM 990, Continued

Updates and Considerations, Continued

- PPP Loan Forgiveness
  - ✓ Report in Part VIII, Line 1e in the tax year forgiveness occurs
  - ✓ Schedule A forgiveness amounts reported as contributions for public support purposes; not program service revenue or miscellaneous revenue
- Form 1099-NEC reporting for nonemployee compensation is used wherever Form 990 references reporting compensation from 1099-MISC
- The highly compensated amount has been increased from $125,000 in 2019 to $130,000 for 2020 which helps to identify who is a disqualified person
- Additional websites included to assist with COVID-19 questions (IRS.gov/Coronavirus) and forms, instructions and publications (IRS.gov/Forms)

FORM 990, Continued

Form 990 Schedule Updates

- Schedule A, Part IV, Section B, Line 1
  - ✓ Forgiven PPP loans are reported as contributions for public support purposes in the year forgiveness occurs; not program service revenue or miscellaneous revenue in either support test
  - ✓ Type I relationship clarified with additional language from “Directors, Trustees or Membership” to “Governing Body, Members of the Governing Body, Officers acting in their official capacity or membership”
- Schedule B
  - ✓ Final regulations are reflected in the Schedule B instructions that only IRC 501(c)(3) and 527 organizations are required to report contributors’ names, addresses and any other identifying information

FORM 990, Continued

Form 990 Schedule Updates, Continued

- Schedule M
  - ✓ Updated instructions explain that Forms 1098-C (Contributions of Motor Vehicles, Boats and Airplanes) and 8899 (Notice of Income from donated Intellectual Property) must be provided to both the donors and the IRS

FORM 990-T UPDATES

Updates and Considerations

- Updated instructions for mandatory efiling for all organizations beginning in February 2021
- Expanded instructions that provide procedural guidance for adopting a new accounting method and under which circumstances IRS consent must be received
- The Form 990-T has been redesigned for 2020
  - ✓ Each unrelated trade or business has its own separate Schedule A

FORM 990-T UPDATES, Continued

Updates and Considerations, Continued

- Payroll credit for required paid sick leave or family leave
  - ✓ An eligible employer who received a credit against payroll taxes under FFCRA does not receive a double benefit
    - Any portion of the tax credits that is allocable to an unrelated trade or business must be included in gross income from that unrelated trade or business
    - The allocable amounts are reported on Line 12 (Other Income) on the appropriate Schedule A
    - Search on IRS.gov for "Special Issues for Employers: Taxation and Deductibility of Tax Credits"

FORM 990-T UPDATES, Continued

Updates and Considerations, Continued

- Employee Retention Credit
  - ✓ Any wages claimed for the ERC cannot also be claimed for another credit
- Temporary allowance of 100% of business meals
  - ✓ In both 2021 and 2022, there is a 100% deduction for certain business meal expenses that are paid or incurred after December 31, 2020
    - Must be recorded separately from entertainment expenses, an employee must be present at the meal and the meal is not lavish
- Form 1099-NEC reporting for nonemployee compensation is used wherever Form 990 references reporting compensation from 1099-MISC

FORFORM 990-T UPDATES, Continued

<u>Updates and Considerations, Continued</u>

- Reminders:
  - ✓ Each unrelated trade or business has its own unrelated business income tax calculation
    - o This calculates any net operating loss for each activity separately
    - o Unrelated business taxable income will not be less than zero
  - ✓ Net operating loss carryback
    - o The CARES Act provides that an NOL arising in a tax year beginning after 2017 and before 2021 can be carried back to each of the 5 tax years preceding the tax year of the NOL
    - o The carryback may be waived by attaching a statement to the return
    - o An amended return can be filed for a tax year beginning in 2018 or 2019 to carryback the NOL
  - ✓ The 80% excess business loss limitation has been suspended for 2020

FORM 990-T UPDATES, Continued

Updates and Considerations, Continued

- Understanding and reporting the silos
  - ✓ All Schedule A should be completed first and the total of the positive amounts from all the schedules is entered on Part II, Line 18
  - ✓ Schedule A is largely similar to the 2019 Schedule M (990-T)
  - ✓ New Box D for listing the sequence number (ex. 2 of 5) where there are multiple Schedules A for multiple activities
  - ✓ There is only one specific deduction allowed of $1,000 regardless of the number of Schedules A prepared
  - ✓ Part I will report the unrelated business income from each separate activity
  - ✓ Part II will report any deduction related to the unrelated business not taken elsewhere

FORM 990-T UPDATES, Continued

Updates and Considerations, Continued

- Understanding and reporting the silos, continued
  - ✓ Line 17 reports deductions for net operating losses arising in tax years beginning on or after January 1, 2018 for that specific activity
  - ✓ Information reported for Rent Income and Unrelated Debt Financed Income has been updated to include each property's address, whether the property is dual use and a description of the property
  - ✓ Parts III – X mirror Schedules A – J on the 2019 Form 990-T
  - ✓ Part XI has been created for supplemental narrative reporting
    - Due to mandatory electronic filing, all supplemental information must be provided here versus a separate attachment

FORM 990-T UPDATES, Continued

Implications of the Redesign

- The new Form is structured so that Post 2017 NOLs from an unrelated trade or business are applied first (Schedule A, Line 17) before their pre 2018 NOLs to offset aggregate unrelated business taxable income (Form 990-T, Part I, Line 6) contrary to the final regulations effective for tax years beginning on or after 12/2/2020
  - ✓ Likely the form will be revised further for 2021

SCHEDULE H

Updates and Considerations

- Importance of telling your story through your community benefit
  - ✓ Form 990 tells your story and is publicly available
  - ✓ Schedule H is critical
- Community Benefit Standard
  - ✓ Revenue Ruling 69-545
    - Promotion of health for the benefit of the community as a whole
    - Basis for defense of tax exempt status for community, congress, IRS, states, media because the hospital serves the public and not private interest

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Community Benefit Standards, Continued
  - ✓ IRC 501(r)
    - Additional requirements to maintain status as an exempt hospital
      - Schedule H documents all elements of 501(r) and is reviewed by the IRS at least once every 3 years which may result in an IRS compliance check or audit when the elements below have missing requirements
      - Community Health Needs Assessment and Implementation Strategy is updated every 3 years
      - Financial Assistance Policy and emergency Medical Care Policy
      - Limitation on Charges
      - Billing and Collection Limitations

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Renewed scrutiny of tax exemptions for Hospitals
  - GAO report September 17, 2020
    - What community benefits should tax exempt hospitals be engaged in
    - Recommends congressional consideration to specify in the Internal Revenue Code what services and activities Congress considers sufficient community benefit
      - Update Form 990 and Schedule H to ensure that community benefits are clearly identified

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Renewed scrutiny of tax exemptions for Hospitals, Continued
  - ✓ GAO report September 17, 2020, Continued
    - Consider required tax exempt hospitals to report community benefit expenses on Schedule H by each individual hospital versus collective organization
    - Establish a well-documented process to identify hospitals at risk for noncompliance with the community benefit standard
    - Create specific audit codes to identify potential noncompliance with the community benefit standards

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Renewed scrutiny of tax exemptions for Hospitals, Continued
  - ✓ GAO report September 17, 2020, Continued
    - The IRS agreed with the GAO's recommendations on September 2, 2020 and deferred to the Treasury Department and Congress on both policy and Internal Revenue Code questions and updates
    - The IRS also emphasized the fact sensitive nature of the community benefit standard analysis

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Renewed scrutiny of tax exemptions for Hospitals, Continued
  - ✓ Senator Grassley letter to colleagues on December 2, 2020
    - Proposes the need for new attention to the tax laws governing non-profit hospitals
    - Came as a result from troubling public reports about University of Virginia Medical Center and Methodist Le Bonheur Healthcare
  - ✓ Expectation of more Hospital audits
    - Data driven approach and more selective due to staff shortage and budget cuts

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Community Benefit Reporting
  - Without further guidance, consider:
    - Does the program and/or activity address an identified community need
    - Does the program and/or activity:
      - Improve access to healthcare
      - Enhance the overall health of the community
      - Advance healthcare knowledge
      - Relieve government burden

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Community Benefit Reporting, Continued
  - ✓ Without further guidance, consider:
    - Is the program and/or activity for the benefit of the community versus the organization
    - Is the program and/or activity subsidized by the organization and not personal financial or time contributions by employees
  - ✓ No bright line test however legislative proposal in 2007 was 5% of revenues

SCHEDULE H, CONTINUED

Updates and Considerations, Continued

- Schedule H importance to Hospital tax exemption
  - ✓ Financial accounting methods for reporting
    - Possibility of book/tax difference relative to PPP fund reporting
  - ✓ Coordination throughout hospital system for accurate data
  - ✓ Covid-19 Reporting
    - Financial assistance policy modifications due to pandemic, loss of employment and insurance
    - Revisit CHNA

SCHEDULE H, CONTINUED

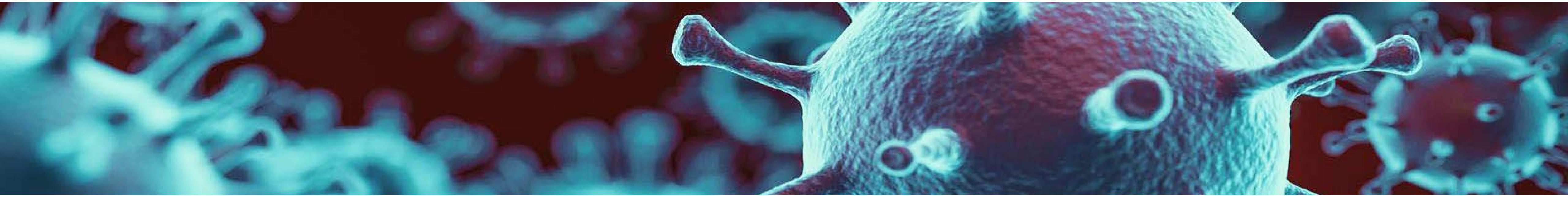
Updates and Considerations, Continued

- Schedule H importance to Hospital tax exemption, continued
  - ✓ Covid-19 Reporting, continued
    - Report additional Covid governmental payments received to offset expenses
    - For example, report coronavirus screenings, surge capacity activities, purchase and storing of essential and expensive supplies and equipment, research, staff training, enhanced cleaning, testing, supporting patients at home, telehealth services, food and other basic necessities, personal protective equipment, testing and vaccinations, mental health support
      - Consider implications to report new Covid-19 programs in Part III

COVID RELIEF PROVISIONS FOR NFP

COVID Relief Challenges

- Not-For-Profits on leading edge of COVID pandemic effects and response nationwide
- Services essential
- Government response relief packages
- Legislation required immediate action, created confusion in how programs worked in existing tax framework, frequently updated throughout the year



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COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Legislation

- Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 – $8.3 Billion – March 6, 2020
- Families First Coronavirus Response Act (FFCRA) – Paid Leave – March 18, 2020
- Coronavirus Aid, Relief and Economic Security Act (CARES) - $2.23 Trillion – March 27, 2020
- Paycheck Protection Program and Health Care Enhancement Act (Phase 3.5 of CARES) - $484 Billion – April 24, 2020
- Consolidated Appropriations Act (CAA) $2.3 Trillion – December 27, 2020
- American Rescue Plan Act (ARPA) - $1.9 Trillion – March 11, 2021
- Hundreds of pages of IRS bulletins, FAQs, announcements

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Provider Relief Fund Payments

- Created by CARES Act - $100 Billion - reimbursements for lost revenue or healthcare related expenses
- Additional $75 Billion under Phase 3.5 Act
- Additional $3 Billion under CAA
- Additional $8.5 Billion under ARPA
- Released by HHS without warning and guidance as to usage of money
- Finally determined that although taxable income for-profit entities, not UBIT for NFP

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Provider Relief Fund Payments, Continued

- June 11, 2021 - newest guidance on report timing requirements and calculating lost revenues
- Six reporting areas required:
  - ✓ Interest earned
  - ✓ Other assistance
  - ✓ Targeted SNF and infection control funds
  - ✓ Other targeted funds
  - ✓ Net unreimbursed expenses
  - ✓ Lost revenues reimbursement

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Provider Relief Fund Payments, Continued

- Lost revenue computation:
  - ✓ Three methods: difference in 2019 and 2020 actual patient revenue, budgeted patient revenue or any other reasonable method

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Paid Sick Leave Credits under FFCRA

- Paid Sick Leave Credits created under FFCRA; CAA removed mandated leave requirement but where granted by employer extended the credit through March 31, 2021; ARPA extended through September 30, 2021
- FFCRA required 2 types of Covid leave:
  - ✓ Emergency Paid Sick Leave (EPSLA)
  - ✓ Expanded FMLA
- Required employers to pay employees for periods of leave when they were unable to work because of the virus up to 80 hours.
- If fewer than 500 employees, paid leave was creditable equal to 100% of qualified sick leave

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Paid Sick Leave Credits under FFCRA, Continued

- Amounts employers required to pay based upon the reason for the leave, duration of absence and the employee’s regular rate of pay
- Claimed on Form 941 quarterly reports
- Eligible leave conditions: Subject to quarantine order or isolation order, self-quarantining, diagnosed or experiencing symptoms of virus, caring for an individual with virus, caring for a child where school or day care closed, or other similar condition
- NYS requirements for paid sick leave

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Employer Retention Credit

- ERC was created under CARES Act expanded under CAA and ARPA
- Purpose: to encourage employers to keep employees on their payroll
- Through extensions now available for all of 2020 and 2021
  - ✓ Claimed on qualified wages reported on Form 941 – quarterly reconciliation report
  - ✓ Size of the employer is important in determining extent of credit
  - ✓ Basic requirement is detriment from COVID either through shut down or loss of gross receipts

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

<u>Employer Retention Credit, Continued</u>

- 2021 Provisions
  - ✓ Refundable credit equal to 70% of $10,000 in qualified wages, PER QUARTER – potential credit $28,000 per employee
  - ✓ For qualified wages paid from 1/1/2021 through 12/31/2021 to employees
  - ✓ Economic hardship related to COVID-19 defined as shut down, partial shut down or gross receipts 20% lower than same quarter of 2019
  - ✓ Small employer defined as 500 or less average employees in 2019. If small employer, all wages are eligible; if large employer wages paid to those who did not work

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

<u>Employer Retention Credit, Continued</u>

- 2020 Provisions
  - ✓ Refundable credit equal to 50% of $10,000 in qualified wages – potential credit $5,000 per employee
  - ✓ For qualified wages paid from 3/13/2020 through 12/31/2020 to employees
  - ✓ Economic hardship related to COVID-19 defined as shut down, partial shut down or gross receipts 50% lower than same quarter of 2019
  - ✓ Small employer defined as 100 or less average employees in 2019. If small employer, all wages are eligible; if large employer wages paid to those who did not work

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COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Employer Retention Credit, Continued

- Eligible Employers
  - ✓ Generally available to all employers regardless of size, including tax exempt organizations
    - Exceptions:
      - Federal, state and local governments and their agencies or instrumentalities. However colleges allowed in 2021
      - Business that received PPP monies. Changes in 2021 so that receiving PPP does not disqualify but wages cannot be double counted

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Employer Retention Credit, Continued

- Eligible Employers, Continued
  - ✓ Aggregation rules with related employers:
    - Members of a controlled group or group of entities under common control are considered to be a single employer for application of ERC rules
    - ERC rules refer to IRC Section 404 aggregation which is used for ERISA testing
    - The ERC will be apportioned among the group members based on each member's proportionate share of the qualified wages giving rise to the credit

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

Employer Retention Credit, Continued

- Claiming Credits
  - ✓ On electronically or paper filed Form 941
  - ✓ On paper filed Form 941X
  - ✓ In advance on Form 7200
  - ✓ No deduction of wages associated with credit is allowed

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

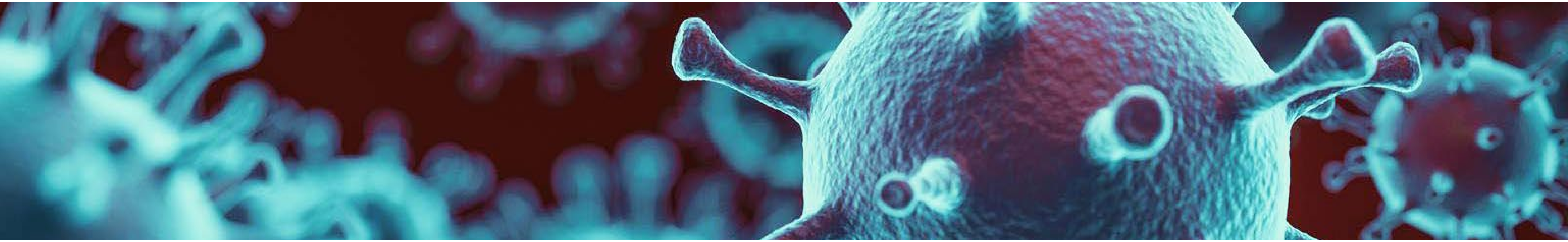
PPP Availability Broadened

- Payroll Protection Program loans had limited availability for Not-for-profits until ARPA
- Not more than 500 employee rule was lifted and changed to a per physical location rule (e.g., YMCAs)
- Interaction of PPP loans covering wages and eligibility for ERC explained. More thought required in PPP loan forgiveness applications utilizing 40% on other qualified expenses (rent, utilities, supplier costs, worker protection) keeping wages for ERC

COVID RELIEF PROVISIONS FOR NFP, CONTINUED

State and Local Aid in ARPA

- NYS receiving $12.5 billion; 57 counties receiving $3.8 billion, villages, towns and cities additional $3.8 billion – allocations based on population
- To be spent locally on reversing negative COVID economic impacts
- Eligible for future aid are workers at government level or Not-for-profit employees



QUESTIONS

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