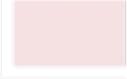


Schedule J, Schedule L, and New NYS Department of State Filings for Exempt Organizations

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*HEALTHCARE CONFERENCE
6.24.21*



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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 2

SCHEDULE J

SCHEDULE L

NEW NYS DEPARTMENT OF STATE FILING

REQUIREMENTS FOR EXEMPT ORGANIZATIONS

SCHEDULE J

Updates and Considerations

- The purpose of Schedule J is to report compensation information for certain officers, directors, trustees, key employees and highest compensated employees, as well as, certain compensation practices within the organization
- Schedule J is required when Form 990, Part IV, Line 23 has been answered yes
 - ✓ Line 23 asks, “Did the organization answer yes to Part VII, Section A, Line 3, 4 or 5 about compensation of the organization’s current and former officers, directors, trustees, key employees and highest compensated employees?”

SCHEDULE J, CONTINUED

Updates and Considerations, Continued

- Schedule J is required when Form 990, Part IV, Line 23 has been answered yes, continued
 - ✓ Part VII, Section A, Lines 3, 4 and 5 ask respectively:
 - Line 3 – Did the organization list any former officer, director, trustee, key employee or highest compensated employee on Line 1a
 - ❖ A former ODTKE is reported when they were or should have been reported as an ODTKE in the past 5 years and in the current year they received reportable compensation from the filing organization and any related organizations more than \$100,000 (former officers and key employees) and \$10,000 (former directors or trustees in their former capacity as such)

SCHEDULE J, CONTINUED

Updates and Considerations, Continued

- Schedule J is required when Form 990, Part IV, Line 23 has been answered yes, continued
 - ✓ Part VII, Section A, Lines 3, 4 and 5 ask respectively, continued:
 - Line 4 – For anyone listed in Line 1a, is the sum of reportable compensation and other compensation from the reporting organization and any related organizations greater than \$150,000

SCHEDULE J, CONTINUED

Updates and Considerations, Continued

- Schedule J is required when Form 990, Part IV, Line 23 has been answered yes, continued
 - ✓ Part VII, Section A, Lines 3, 4 and 5 ask respectively, continued:
 - Line 5 – Did any person listed on Line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization
 - ❖ When a former or current ODTKE received or accrued compensation or payments from an unrelated organization or individual for services rendered to the filing organization in their capacity as an ODTKE of the filing organization
- Form 1099-MISC is now used to report nonemployee compensation (replacing 1099-MISC)

SCHEDULE J, CONTINUED

How to Report Compensation

- Part I, Questions Regarding Compensation:
 - ✓ Looking for information regarding benefits and compensation practices of the organization
 - ✓ Pertains to all officer, directors, trustees and employees of the organization listed in Part VII, Section A of Form 990
 - ✓ Pertains to the filing organization and not the related organization(s)
 - ✓ Reasonable compensation and the rebuttable presumption of reasonableness

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Part II, Officers, Directors, Trustees, Key Employees and Highest Compensated Employees
 - ✓ Detailed compensation information for the individuals that the organization has answered Part IV, Line 23 as yes
 - This means there could be individuals listed in Part VII, Section A that are not listed in Schedule J
 - ✓ The compensation information reported pertains to the calendar year ending with or within the reporting organization's tax year
 - ✓ Do not include management companies or independent contractors

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Part II, Officers, Directors, Trustees, Key Employees and Highest Compensated Employees, continued
 - ✓ For the individuals that must be reported in Schedule J, list both the compensation and benefits received from the reporting organization and any related organization
 - ✓ The detail for the compensation package is provided by reporting base compensation, bonus or incentive compensation, any other types of compensation, current year deferrals for any retirement or deferred compensation plan, non-taxable benefits and compensation that have included current year amounts and has been previously reported on a prior Form 990

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Executive Compensation
 - ✓ Form 4720, Schedule N is required to be completed if Form 990, Part V, Line 15 was answered yes; i.e. payments of more than \$1,000,000 in remuneration or excess parachute payment(s) during the year
 - ✓ IRC Section 4960 imposes an excise tax at the current corporate tax rate of 21% on remuneration paid by an applicable tax exempt organization (ATEO) for the tax year with respect to employment of any covered employee in excess of \$1,000,000 and on any “excess parachute payment” by an ATEO to a covered employee

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Executive Compensation, Continued
 - ✓ Final regulations were issued in January 2021 and are applicable to tax years beginning after December 31, 2021
 - Taxpayers may choose to apply the final regulations now, rely on a reasonable good faith interpretation of the statute including legislative history, Notice 2019-9 or the proposed regulations until the applicability date

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Executive Compensation, Continued
 - ✓ An ATEO includes:
 - An organization exempt from taxation under Section 501(a);
 - A farmer's cooperative organization described in Section 521(b)(1);
 - An organization that has income excluded from taxation under Section 115(1), and
 - A political organization described in Section 527(e)(1)
 - ✓ An organization may also be considered to be an ATEO if it:
 - Controls or is controlled by an ATEO
 - Is controlled by one or more persons that control the organization
 - Is a supported or supporting organization with respect to the ATEO

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Executive Compensation, Continued
 - ✓ A covered employee is any employee of an ATEO who:
 - Is one of the five highest compensated employees of the organization for the tax year, or
 - Who was considered a covered employee for any tax year beginning after December 31, 2016 (once a covered employee, always a covered employee)
 - ✓ Determination of the five highest compensated employees is based on the total remuneration paid during the year as an employee of the ATEO or a related organization
 - This is determined separately for each ATEO which means in a group of related organizations there may be more than five highest compensated individuals

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Executive Compensation, Continued
 - ✓ Remuneration means any amount in wages excluding a designated Roth contribution and including amounts required to be included in gross income as per IRC Section 457(f) from the reporting organization and any related organizations
 - Excluded are amounts paid to licensed medical professionals or veterinarians for professional medical services and reasonable fees paid to a director of the organization
 - Where more than one organization paid remuneration, the tax liability can be apportioned among the entities
 - Examples

SCHEDULE J, CONTINUED

How to Report Compensation, Continued

- Excess Parachute Payments
 - ✓ Remuneration to a covered employee is contingent upon the employee's separation from employment and the aggregate present value of the payment equals or exceeds three times the "base amount"
 - The base amount is the average annual remuneration for the employee in question for the five most recent tax years ending prior to their date of separation from service
 - The excess parachute payment equals the excess of the separation payment over the base amount apportioned

SCHEDULE J, CONTINUED

Form 4720

- Due 4½ months after the year end with a 6 month automatic extension to file the Form
- Estimated tax payments are not required; tax can be paid in full by 4½ months after year end

SCHEDULE L

Updates and Considerations

- Schedule L important cross references
- Purpose of Schedule L
 - ✓ Providing a road map and information about certain financial transactions between the filing organization and “disqualified persons under IRC 4958” or other interested person
- IRC 4958 governs “Excess Benefit Transactions” – Why is this important?
 - ✓ If a disqualified person benefits from an excess benefit transaction, that person is initially liable for a 25% tax on the excess benefit
 - ✓ If the excess benefit isn’t corrected by a certain date, then the disqualified person is also liable for a 200% tax on the excess benefit

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- IRC 4958 governs “Excess Benefit Transactions” – Why is this important?, continued
 - ✓ Additionally, any organizational manager who knowingly, willingly and without reasonable cause participated in the excess benefit transaction is liable for a 10% tax on the excess benefit, not to exceed \$20,000 for all participating managers
 - ✓ Reported in Form 990, Part IV, Lines 25a and 25b and Schedule L, Part I, then:
 - Prepare and file Form 4720 which is a separate form that is filed to report and pay the tax due

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person?
 - ✓ Schedule L, Part I, an interested person is a disqualified person under IRC 4958
 - A person who was in a position to exercise substantial influence over the affairs of the organization at any time during 5 year period ending on the date of the transaction. This would include:
 - ❖ Voting members of the governing body
 - ❖ Persons holding the powers of President, Chief Executive Officers or Chief Operating Officers, Treasurers, Chief Financial Officer

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person, continued?
 - ✓ Schedule L, Part I, an interested person is a disqualified person under IRC 4958, continued
 - ❖ Also included would be certain family members of a disqualified person and 35% controlled entities of a disqualified person
 - ❖ With regard to a donor advised fund, this would include a donor or donor advisor of the fund
 - ❖ For a supported organization of a IRC 509(a)(3) supporting organization, it will also include the disqualified persons of the IRC 509(a)(3) supporting organization

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person, continued?
 - ✓ Schedule L, Part II – IV, an interested person is:
 - A person required to be listed in Form 990, Part VII, Section A as a current or former officer, director, trustee or key employee
 - For Part IV, a former officer, director, trustee or key employee within the last 5 tax years is treated as an interested persons whether or not they are required to be listed in Part VII
 - The creator or founder of the organization
 - A substantial contributor
 - ❖ For this purpose, a substantial contributor is an individual or organization that made contributions during the tax in the aggregate of at least \$5,000 and whose contributions are required to be reported on Schedule B

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person, continued?
 - ✓ Schedule L, Part II – IV, an interested person is, continued:
 - For purposes of Part III, a member of the organization's grant selection committee
 - A family member of any of the above
 - A 35% controlled entity of one or more individuals and/or organizations previously described

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person, continued?
 - ✓ Schedule L, Part II – IV, an interested person is, continued:
 - For Part III, an employee or child of the employee of a substantial contributor or of a 35% controlled entity of such person
 - ❖ However, this is true only if the employee or child of the employee received the grant or assistance by the direction of the substantial contributor or designee of the 35% controlled entity or under a program funded by the substantial contributor that was intended primarily to benefit such employees or their children
 - ❖ An exempt organization or governmental unit are not interested persons

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Who is an interested person, continued?
 - ✓ Schedule L, Part II – IV, an interested person is, continued:
 - Only a reasonable effort needs to be made to secure the information necessary for reporting, such as:
 - ❖ An annual questionnaire distributed to persons that could be considered interested
- Schedule L, Part I, Excess Benefit Transactions
 - ✓ Definition: the tax exempt organization directly or indirectly provides an economic benefit to, or for the use of, a disqualified person and the economic benefit exceeds the value of the consideration received by the organization for provide the benefit

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Schedule L, Part I, Excess Benefit Transactions, Continued
 - ✓ The determination of whether an excess benefit transaction has occurred includes all consideration and benefits exchanged between or among the disqualified person and the tax exempt organization and all entities it controls
 - ✓ If a supporting organization makes a grant, loan, payment of compensation or similar payment to a substantial contributor, the arrangement is an excess benefit and the entire amount is taxable
 - ✓ Fair market value is used to value property exchanged in connection with an excess benefit transaction

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Schedule L, Part I, Excess Benefit Transactions, Continued
 - ✓ To correct an excess benefit transaction, the disqualified person must undo the transaction to the extent possible by putting the organization in a financial position not worse than it would have been in
 - An agreement may not necessarily need to be rescinded but may need to be reworked
 - Return the property and/or cash
 - Make a payment in cash
 - ✓ The correct amount is equal to the excess benefit amount plus any interest on the excess benefit

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Schedule L, Part II, Loans to and/or From Interested Persons
 - ✓ Report loans between the organization and interested persons that have an outstanding balance at the end of the year, regardless of the amount
 - ✓ There are some nuanced exceptions
- Schedule L, Part III, Grants or Assistance Benefiting Interested Persons
 - ✓ Regardless of the amount, report grants or other assistance (such as scholarships, fellowships, discounts on goods or services, prizes, awards or internships) given to interested persons
 - ✓ There are some nuanced exceptions

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Schedule L, Part IV, Business Transaction Involving Interested Persons
 - ✓ Business transactions include but aren't limited to joint venture, contracts of sale, lease, license, insurance and performances of services
 - ✓ Certain management company transactions with former ODTKEs
 - ✓ There are thresholds for reporting and an exception for the ordinary course of business

SCHEDULE L, CONTINUED

Updates and Considerations, Continued

- Schedule L, Part IV, Business Transaction Involving Interested Persons, continued
 - ✓ Report When:
 - All payments during the tax year exceed \$100,000
 - All payments during the tax year from a single transaction exceed the greater of \$10,000 or 1% of the organization's total revenue
 - Compensation payments during the year to a family member of a current or former ODTKE exceeds \$10,000
 - Where there is a joint venture and the organization has invested \$10,000 or more
 - Aggregate reporting for multiple individual transactions is acceptable
 - ✓ Nuanced exceptions for reporting

NYS – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NFP ENTITIES

Filing Requirements

- New York State quietly amended Sections 172-B, 172-E and 172-F of the Executive Law, which governs many reporting requirements for charitable tax-exempt organizations
 - ✓ This is New York State’s attempt to obtain donor disclosures for groups involved in New York advocacy that were deemed unconstitutional in 2019
 - ✓ The proposed Regulations under 19-NYCRR, Chapter IV, Part 146, were issued in February 2021
 - ✓ The regulations created new requirements for certain exempt organizations, which are effective January 1, 2021

NYS – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NFP ENTITIES, CONT.

Filing Requirements, Continued

➤ CHAR500

- ✓ Those organizations who are registered with the Attorney General, solicit in NYS and are registered under Article 7A or are Dual filers and receive total revenue and support over \$250,000 will be required to file the same report with the New York Department of State
- ✓ Due to the Department of State at the same time they are due to the NYS Charities Bureau, on the 15th day of the 5th month after the close of filing organization's fiscal year
 - Unclear whether an extension will be granted or to what extent there may be coordination between the two NYS Offices

NYS – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NFP ENTITIES, CONT.

Filing Requirements, Continued

- Funding Disclosure Report
 - ✓ To be filed by certain IRC 501(c)(3) organizations that make certain in-kind donations greater than \$10,000 within a six month period to IRC 501(c)(4) social welfare organizations that engage in NYS specific lobbying activities
 - ✓ To be submitted within 30 days of the close of the reporting period depending on when the transaction occurs. The reporting periods are January 1 through June 30 (July 31st due date) and July 1 through December 31 (January 31st due date)

NYS – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NFP ENTITIES, CONT.

Filing Requirements, Continued

➤ Financial Disclosure Report

- ✓ To be filed by any IRC 501(c)(4) organizations that have issue based advocacy spending in an aggregate amount or fair market value greater than \$10,000 in a calendar year
- ✓ To be submitted within 30 days of the close of the reporting period depending on when the transaction occurs. The reporting periods are: January 1 through June 30 (July 31st due date) and July 1 through December 31 (January 31st due date)
 - Further, the proposed regulations require that 501(c)(4) filers must submit a full Schedule B, with donor information, along with Form 990 (whether or not they were required to prepare Schedule B for federal purposes)

NYS – NEW DEPARTMENT OF STATE FILING REQUIREMENTS FOR CERTAIN NFP ENTITIES, CONT.

Filing Requirements, Continued

- All three reports must be filed by the taxpayer, via the Department of State website, by creating or utilizing an existing NY.Gov account
 - ✓ In addition, each report carries a \$25 filing fee



QUESTIONS



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