



An Association Newsletter for and About its Members – September, 2018

*****SAVE THE DATE*****

**Annual Meeting
June 19th – 21st 2019
Coeur D'Alene, ID**

MEMBER NEWS

BARSON GROUP (SOMERVILLE, NJ) – the Firm's CLE series continues with a number of presentations over the past several months, as well as Kal Barson giving a couple of speeches on the new tax bill. Mini-book #11 – "Divorce Taxation, the Basics" – will be out in December. As with the prior mini-books, it is used as a marketing tool to the legal profession.

BOWERS & Co. (SYRACUSE, NY) – the Firm has new staff in the Watertown Office – they include, Lena Netto, Staff Accountant, Jennifer Keyes, Accounting Services Specialist & Heather Valadez, Administrative Assistant; and in the Syracuse Office, Cailin Korts, Staff Accountant. It has conducted over 27 Tax Reform Briefings to explain the individual and business effects of the recent tax changes. Financial Planning Services include Quarterly Market Update E-Newsletter & Webinars to the American Short Line Regional Railroad Association. Construction Services Practice Group includes Northern NY Builders Exchange, Spring Social Mixer.; Quarterly E-Newsletter & Bi-annual Workshops & Annual Construction Conference.

B&C Accounting Services Practice Group includes 3 QuickBooks Training Classes; Quarterly E-Newsletters; Direct Mail to NFP organizations, with follow-up calls & Promotional Activity Surrounding Land Banks. B&C Not-for-Profit Practice Group did a Direct Mail Campaign promoting Client Accounting Services. Short Line Railroad Practice Group has made presentations to the American Short Line Regional Railroad Association (ASLRRA) including Webinars, The Road to Retirement; Conference Participation – Eastern Regional Conference – September

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David A. Harris
Peer Review Director
Joe Kistner
Newsletter Editor
Kal Barson

Regional Coordinators
Southern – Chris
Townsend
Western – Bob Ravano
Northern – Robert Gullick

12-14, Southern Regional Conference – October 25-27, Central Pacific Regional Conference – November 13-15 & Finance & Administration Conference – November 16-18. Business Valuation activities include Regular E-Newsletters, a seminar for the Estate Planning Council & a webinar for ASLRRRA. Manufacturing Practice Group activities with Manufacturers Association of CNY include: Annual MACNY Hall of Fame Dinner, MACNY Council Summer Networking Mixer, MACNY Council Kickoff, Finance Council, Business Development Council; & a Direct Mail Campaign with call follow-up.



COOPER MOSS RESNICK KLEIN (SHERMAN OAKS, CA) – the Firm has promoted Thomas Roh, who has been with the Firm for 13 years, to partner. He is a broad generalist, with experience in a variety of local and international businesses. He grew up in Seattle, and received his Bachelor's degree from Washington State University.

INFANTE & Co. (HOLLYWOOD, FL) – the Firm hired Claudia Estrada, CPA (Puerto Rico) as a senior accountant. She is bi-lingual, has worked for two national firms, and recently moved to Florida.

FUNKY BREWSTER

Our 2018 annual meeting was another major success, with terrific programs. This time we were about as far East as we can get – the famous Cape Cod. Social activities began as soon as the second of us arrived and didn't end until the penultimate of us left. Organized activities included our customary Tuesday evening reception – held on a terrace in a most pleasant setting; followed Wednesday afternoon by a Clam Bake, superbly hosted by Debbie & Alan LaPierre at their house in Dennis; followed by a sunset sail (under motor) Thursday evening. Lest no one think that we were simply socializing, we did accomplish 15 hours of very valuable CPE during our 3 days of meetings.

Wednesday's program was a variation on a theme – digressing from the standard self-introductions to niche presentations – with each of 8 firms providing insight into 10 particular niches handled by their firms. Areas covered included audits of governmental entities, with insight into the process; and peer reviews, with a suggestion that one of the newer angles being used is to help firms prepare for their peer reviews so as to ensure (or at least greatly increase the likelihood of) a successful peer review. This includes determining areas that require selection for peer review, use of checklists, recognition of pressure from the AICPA, and practical suggestions for choosing the right peer reviewer. It was also mentioned that peer reviewers themselves are subject to oversight – apparently by super peer reviewers. We talked about the pricing

of 401(k) and ERISA audits, and what should be expected, along with concerns about low-balling. It was mentioned that the DOL suggests that a typical 401(k) audit will take about 120 hours of professional service. It was mentioned that doing pension audits is an appealing area because it is required for all plans with greater than 100 participants, and that there is nothing particularly technical or unusual about the audit function. Also, it is good for off-season work, and a potential entrée to larger companies. However, there is often an October 15th deadline, which may present some crunch issues with 1040s due at the same time.

The next niche area covered was that of litigation/valuation, with details as to staffing, credentials, marketing, and some of the issues in servicing this area. One comment in particular was that you cannot avoid related work here by claiming overload from tax season – that type of excuse doesn't fly in litigation work. Other expressed concerns included collections problems (particularly in the divorce arena), discomfort of cross-examination, the need for engagement letters, conflicts with regular clients, and the risk of prior writings/speeches being used against you. It was also commented that collaborative law is a potentially beneficial area in which to get involved. We discussed the entertainment industry, with a wide range of types of talents and skills that are represented therein, and recognition that a few unions are very big and influential in the entertainment industry. It was mentioned that typically the money flows to the agent, who after taking 10% then flows it to the management company – which is typically the area handled by accountants. It was mentioned about the need to do the payroll for these entities, responsibility for cutting checks (though approved by other parties), keeping money available in the corporate account, the extent of handling all the personal finances of selected individuals (including bill payment), and thus having signatory powers on the checking account; issuing monthly financial statements – which are basically QuickBooks type generated – not creating an attest service. Also, recognizing multi-state nuances, and residency issues.

The next area covered involved school audits, with each school district having a requirement for substantial financial disclosures, and annual audits. RFPs are standard. We talked about SEC services, the need to manage risks, and the all important issue of having someone who has done a number of such audits in the firm before you even attempt to get into this area. Somehow this got us talking very briefly about servicing cannabis businesses, with one individual present acknowledging having some experience in that area. There was a recognition of major issues with the banks because of federal laws, and extreme issues of handling cash.

The next niche area covered was Special Needs Trusts with advice of handling the administrative elements of same, and filling the role of an executor or trustee equivalent. This area involves handling all the monetary issues, including approving bills, disbursing funds, and making a determination as to whether a requested expenditure is acceptable under the terms of the Trust. The need to adhere to the Trust document (usually the result of a trial or

settlement) was emphasized, as well as the need to file Form 1041. These types of clients tend to be long-term clients, typically running 10 years or so. Competition is usually from banks looking to control these Trusts so as to invest the money. The sweet spot for seeking these type of clients is in the 1 to 5 million dollar Trust asset range. It was commented that there are surprisingly few CPA competitors, at least in the market being discussed. We were advised that most of the time the Trust gets exhausted through normal use and expense distributions. The accountants doing this are named as Trustees individually – the firms are not named, but of course typically the fees are all run through the firm for management and administrative purposes. As to being out of the office at a time that it becomes urgent to cut a check, it was advised that like so many other things, you have to plan for this with a backup. Also, that this type of work has morphed into other Trust work, that not involving special needs. Leverage here was described as very good, heavy on the staff and light on the partner level; and that the work typically comes through contacts with elder law attorneys.

Next was a discussion about a specialty assignment involving law firm consulting, addressing a particular firm's issues with low profitability, high partner time, much of which wasn't being captured, and poor use of leverage with the staff. It involved getting into the nitty gritty details of the law firm, and working in part as a hammer to see to it that billable time for all levels of personnel was properly captured. There were regular sit-down conferences with law firm management, resulting in high level conferencing, and a semi-annual review. It was commented that one of the best parts of this assignment was the substantial referrals that resulted from servicing the law firm.

The final niche discussed was construction, with the need to commit to learning this area because of its particular nuances. This typically meant meeting and mixing with the right people, with the particular issue here being contacts with sureties. As with other niches, you need somebody to commit and champion this area, support of the firm, and patience to make it happen. This firm took a couple of years to make this into a successful niche. You need to keep visible, attending shows, making presentations – many of the common marketing type activities.

On Thursday, we had our first outside presentation, from a combo of an insurance guy and a lawyer, talking to us about accounting malpractice and related issues. We discussed former clients making demands for the return of records, and our virtual absolute requirement to return any client records – but not necessarily our own developed records. We also discussed issues with electronic records, and IRS rules, and that typically states each have their own rules. We also covered predecessor versus successor issues, financial statement disclosures for issues such as going concern. An interesting area was addressing wrongs that were done by a partner, and the ability (or inability) to force out a bad partner. Also, going beyond the minimum requirements for a certain level of service. We were warned that inconsistencies between budgeted time and actual time can present

problems in litigation – particularly where partner time is unusually low, perhaps suggesting inattention. Also, protecting the accounting firm from doing or not doing certain things, and cautioning strongly the use of common sense in such ways as, if it looks wrong, don't ignore it.

The second session of Thursday morning was a group discussion of our unique stat survey, with our discussion leader, Lenny Klein, challenging and questioning various numbers. It was noted that there was in general an understatement of fees generated between our member firms – with Lenny citing a few obvious examples. The discussion included profit margins, financial service revenue, firms having some substantial reduction in volume. We also discussed Friday hours, with some firms mentioning they allow working from home on Fridays to help staff avoid commuter traffic. Also covered were benefits such as health insurance and paying for CPA prep courses; also billable hours, staff versus partner issues, and recognition that both partners and staff sometimes have caregiver responsibilities and some firms adjust billable hour expectations accordingly. One firm mentioned a cyber breach, with the attendant notification issues and insurance concerns. We discussed policies regarding the use of cell phones in the office, with a general recognition that with today's generation, the phone is virtually an attachment to the body. Also, the issue of discouraging picking up a cell phone to take a call while driving – in particular when driving for business/a client, with the attendant concern of firm exposure. Also using an outside service to help test our own internal controls re accepting and opening emails, and other cyber compliance issues.

Our Thursday afternoon program dealt with a multitude of factors involving IT and our profession. It was commented that artificial intelligence (AI) is having an ever increasing impact on many areas of commerce, including the medical field, retail, sports, telephone interaction making reservations, job interviews, etc. The presentation continued explaining how the state-of-art nowadays allows a lot in terms of voice and command recognition, and the ability to get many more things and actions accomplished without a human at the other end. He suggested that there are ways to use technology to help to decide if you want to accept a certain client; also using "glass door" to see how employees rate your firm. We also discussed the need for advanced and enhanced security procedures, dual authorizations, and the high level of risk in using public internet access avenues for anything that is confidential.

We ended our Thursday program with the business meeting, advising all of various decisions made at the Board meeting the day before. The members unanimously approved the proposed slate of officers, with Alan LaPierre voted in as National Coordinator for the two fiscal years November 2018 through October 2020. The budget was also approved, with no dues increase. Everyone was reminded that the 2019 meeting will be from June 19th to the 21st in Coeur D'Alene; and that the Board had decided that the 2020 annual meeting will be in Santa Fe, NM. No objections from the members were

expressed relevant to same. It was also mentioned that we need to attempt to get new members.

The first of our two excellent presentations on Friday was one with dramatically appropriate timing. It was on nexus – and it was literally just the day before that SCOTUS ruled on the *Wayfair* decision, dramatically changing the issue of nexus – essentially replacing physical nexus with economic nexus. It was mentioned that it is uncertain as to when *Wayfair* will be fully implemented at the various state levels. An overall issue is just how far states will attempt to extend or stretch the nexus connection. The phrase was used “substantial nexus” – but there is no clear definition as to what that might mean. Based on *Wayfair*, the threshold may be \$100,000 of sales, or 200 transactions in a year, within/to any state will trigger that state’s entitlement to claim economic nexus, and thus demand sales tax collection where relevant. Those thresholds are not definite – they are the thresholds in South Dakota which successfully sued *Wayfair* – and SCOTUS did not rule on that degree of detail, only that South Dakota was within its rights. In theory, one sale could trigger a claim of economic nexus.

Another concern is the statute of limitations, and whether companies would be better off ignoring this until tagged, vs. “coming clean” as of now, filing a voluntary disclosure agreement (VDA) which generally allows you to limit your exposure to 3 years, vs. whatever. We were advised that some states, absent a VDA, self-limit themselves to going back 7 years. Being present at a trade show usually does not generate nexus, unless the company takes orders. Generally, if the sales order needs to be approved back at headquarters, then economic nexus has not been met (at the trade show). We were told that taking a course (think in terms of CPE) does not create nexus; but giving a course, teaching others, likely does create nexus. In general, virtually all states are getting more aggressive in pursuing avenues for tax; and the process has become more sophisticated, with data mining and search capabilities far greater than they ever used to be.

Various states have instituted a Notice Requirement, where a company is required to advise a state who your in-state customers are, even if sales tax is not directly an issue. Clearly, this is intrusive, and sets the stage for (frankly) who knows what. Concern was expressed as to open years and retroactive application of *Wayfair*. It is a virtual given that, in relatively short order, we can expect the *Wayfair* nexus decision to extend to income tax exposure, including to accounting firms where we do tax returns for clients in various states. It was mentioned that a number of states have a habit of sending out a nexus questionnaire to various businesses, asking them, in effect, to voluntarily advise as to the extent of business they do in those states. It was suggested that upon receipt of these we ignore the first such, and maybe even the second such request – but at some point, businesses may be compelled to respond. Needless to say, responses must always be truthful.

The final session of our meeting was on the 2017 Tax Act, looking at it from a point of view of how to address it in an aggressive fashion for our and our clients' benefits. We discussed various states attempts to get around the SALT \$10,000 limitations by creating so-called charities for purposes of real estate tax payments. Another approach by some states is to create an employer payroll tax to function in lieu of withholding taxes. In general, there was a lot of skepticism as to whether either of these approaches will pass muster – and agreement that they will be challenged. Related to this we discussed the risk – both at the client level and at our level – of following an aggressive state position in defiance of IRS policy.

It was mentioned that it is time to revisit the C corp vs. PTE format, with selected situations being able to benefit from the 21% tax rate for C corps, providing that the C corp can be used for long-term goals, to truly benefit from the lower tax rate. A related concern was whether such a business would run into an excess accumulated earnings problem. Concern was expressed as to whether a rental business that might otherwise be eligible for the 20% QBI carve-out, if it deals with triple net leases, might run afoul of the rule under a theory that triple net leases do not constitute a trade or business, and therefore are not eligible for the 20% QBI. For this item as well as many others, there are no definitive answers and certainly no guidance from the IRS as yet.

For service and professional service businesses, it was suggested looking at segregating the business into pieces in order to enhance the possibility of a QBI for at least part of the business. It was not mentioned, but perhaps instead of separating, aggregating different parts might succeed – but again, these are unknown and potentially aggressive positions to take. It was suggested that if an aggressive position is taken, to also include the appropriate disclosure forms, indicating that you are taking a position that might not be consistent with the official IRS party line. It was commented that while the wages test for the QBI is not necessary below the income threshold level, and is necessary above it, it is believed to also be necessary in the phase-out range. One angle suggested was the potential use of non-grantor trusts, to maximize the QBI, possibly having trusts for various children, taking advantage of multiple QBIs at low income levels. Finally, it was commented that because of the new high estate tax exclusion, it may be time to revisit estate planning, looking for an approach that recognizes the lesser need to remove assets from an estate, with an eye towards keeping more in the estate for potentially a better use of the step-up in basis at death.