



Legislative Update



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Dear INSERT_FIRST_NAME,

The New York State Society of CPAs (NYSSCPA) always strives to be the voice and advocate to our legislative and regulatory bodies on behalf of our members. We have the connections and the Government Relations Team to do the work that not all of you are able to do, whether due to resource restrictions or politics. During these past 18 months, more than ever before, the Society had its work cut out for it, and many victories came out of our successful efforts for you and your businesses.

Advocacy efforts are still ongoing, by the way. Here are a few features you will find in this newsletter: The Working for Our Members section will include the most recent actions we have taken to protect our members. Further into the newsletter, you will always find a Legislative Spotlight, where we will take a deep dive into one particular issue on our Legislative Agenda each month. In addition, we will include a few pertinent legislative and regulatory articles each month to keep you up-to-date on related happenings. Finally, you will always find contact information at the bottom of each issue, where you are invited to submit issues for consideration that are affecting you and your business.

Please enjoy the first issue of the *Legislative Update*.

Sincerely,

Joanne S. Barry
CEO/Executive Director
NYSSCPA

SOCIETY ADVOCACY WORK

2021 Leadership Conference

Legislative Roundtable: The Legislative Task Force (LTF) and the Political Action Committee (PAC) both met during the 2021 Leadership Conference on Sunday, July 11. The LTF had an open dialogue on our advocacy priorities, took questions from the members in attendance and gave an update on our Legislative Agenda items. The groups were briefed on the current status of the state's legislative branch, and the PAC approved a number of operational items, including a 2021–2022 bipartisan state officials disbursement plan, where funds for a candidate or campaign organization are allocated for the next election cycle.

The Legislative Update: This year, Sen. John C. Liu (D-Queens) joined the Leadership Conference and spoke directly to our members regarding the Senate's legislative priorities. Sen. Liu, a former New York City comptroller and actuary at PwC, was

instrumental in spearheading the passage of the e-signature bill, which became law in 2021, and is currently working with us to expand that law to include a Power of Attorney. Learn more about the e-signature bill in our [Legislative Victories section](#).



2021 NYSSCPA Lobby Day: Members of the LTF and NYSSCPA Leadership met with eight members of the New York State Legislature, including New York State Assembly Speaker Carl E. Heastie and Senate Majority Leader Andrea Stewart-Cousins. The Lobby Day team discussed legislation that the NYSSCPA is actively working to get passed in Albany. The team covered expanding the e-signature legislation to include Power of Attorney, non-CPA ownership and the False Claims Act (FCA). Learn more about the FCA in the [Legislative Agenda Spotlight section](#).



The Lobby Day participants also took the opportunity to thank the legislators for their leadership in passing the Marihuana Regulation and Taxation Act (MRTA), e-signature and pass-through tax entity legislation, which provides the profession with access to cater to clients' needs remotely; allows for expansion to new clientele and offers an opportunity for CPAs to explore new financial streams for government entities and already existing clients; and ensures that no client is paying more than its fair share to state and federal agencies. Before ending each meeting, the team offered support to each office regarding questions related to accounting-, auditing- and taxation-related matters and legislation

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WORKING FOR OUR MEMBERS

Letter to the Governor: In June, NYSSCPA CEO/Executive Director Joanne S. Barry authored [a letter](#) to the Governor regarding the False Claims Act (FCA). In the letter, Barry urges the governor to veto S. 4730, an act to amend the state finance law, in relation to the liability of a person who presents false claims for money or property to the state or local government. Read more in the [Legislative Agenda Spotlight](#).



Working with the NYS Business Council: In addition to our primary goal of protecting the CPA license, the NYSSCPA partners with complementary associations and societies to address New York business issues. Most recently, the NYSSCPA signed a letter authored by the Business Council of New York State regarding the False Claims Act (learn more about the False Claims Act in our [Legislative Agenda](#)). In a letter to the Governor's Acting Counsel Beth Garvey, the 16 co-signers expressed opposition to how the current draft of the legislation can be damaging to the businesses throughout the Empire State. [Read the letter](#).

Working Amid the Pandemic: During some of the darkest moments of the pandemic, the NYSSCPA focused its efforts on fighting to protect our members each and every day. Through our work, we were able to ensure the accounting profession was deemed an

essential service in New York State while simultaneously working to successfully extend tax deadlines on the **local** and **state** levels. After winning the fight to extend tax deadlines, the NYSSCPA Government Relations Team worked with the New York State Department of Taxation and Finance to present clear guidance for the changes presented by extending the tax deadlines and the adoption of the then-temporary e-signature legislation. Since that time, e-signature has been officially passed.

On a larger scale, we worked with our national partner, the AICPA, to federally extend tax deadlines in 2020 and 2021, and for the much-needed lobbying in the numerous congressional **COVID-19 relief bills**. We prioritized ensuring that key issues were not swept under the rug, while major attention had been given to handling the global crisis. The federal work that the NYSSCPA Government Relations Team partnered with the AICPA on lobbying projects with included members of Congress, the Small Business Administration (SBA), the Internal Revenue Service (IRS), the Treasury Department and the White House.

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LEGISLATIVE VICTORIES

Cannabis Legalization: In late March, the New York State Senate and Assembly both passed the MRTA, which ends the generations-long prohibition on adult-use recreational cannabis in New York state. The Governor signed the act into law on March 31.

The bill will impose a 9 percent state sales tax plus a 4 percent local sales tax; counties would receive 25 percent of the local retail tax revenue, with 75 percent going to the municipality. Wholesalers will get a tax of their own—half of one cent per milligram of THC (the psychoactive component of cannabis).

Why it matters: This new law will provide accounting professionals with a new avenue to explore when it comes down to various aspects of compliance, regulation and taxation. [Read more about it.](#)

Electronic Signature Authorization: The new law allows tax preparers to accept an electronic signature instead of a traditional “wet” signature for tax-related documents. In June 2020, both the Senate and the Assembly passed the Electronic Signature Authorization bill alongside other important COVID-related legislation. The Governor signed the bill into law in August 2020. [Read more about it.](#)

The SALT Tax Workaround: In mid-April, the Governor signed into law legislation that creates a New York Pass-Through Entity Tax, effective for tax years beginning on or after Jan. 1, 2021. This consequential tax legislation, available to electing pass-through entities, provides a mechanism for New York state individual taxpayers to limit the impact of the federal \$10,000 limitation on state and local tax deductions under the Tax Cuts and Jobs Act of 2017. The tax takes on added significance in mitigating the effect of the newly imposed New York state personal income tax rate increases on high earners. [Read more about it.](#)



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LEGISLATIVE AGENDA SPOTLIGHT

False Claims Act (FCA): The federal FCA lets the government recover for any false or fraudulent requests or demands for money. This also includes fraud to avoid paying money to the government. The federal FCA contains a “tax bar,” which states that the law does not cover fraud under the tax code. Several states, including New York, have eliminated the tax bar from their state FCAs. New York’s FCA is much more expensive than the federal statute and many other states’ false claims laws.



Specifically, in New York, liability under the FCA may be imposed on any person who---

- knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- has possession, custody, or control of property or money used, or to be used, by the state or a local government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or local government, and knowing that the officer or employee violates a provision of law when selling or pledging such property;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a local government; or
- Conspires to do any of the above.

New York’s FCA states that these provisions apply to tax claims, records or statements. “Knowingly” is at the heart of New York’s FCA. A false claim, record or statement does not violate the FCA unless submitted knowingly. The term requires more than mere negligence; it suggests misstatement of knowledge, deliberate ignorance of the truth, or falsity of the information or reckless disregard of the truth or falsity of the information .

The statute does place certain restrictions on tax claims that do not apply to false claims generally. Tax claims may be brought only against persons whose net income or sales in at least one contested year is \$1 million or more, and only when the damages equal or exceed \$350,000. In addition, the attorney general is instructed to consult with the Commissioner of Taxation and Finance before intervening in state tax-related false claims actions.

In recent months, however, S.5319/A.2506 was introduced to further expand New York’s FCA beyond reasonable limits. The legislation would allow the New York FCA to be used as a tool to recover unpaid tax obligations based on false claims made by certain individuals or businesses without the statutory requirement that such false claims were made knowingly. The bill memo states that the FCA would become a tool by allowing claims “without needing to clear the evidentiary hurdle of proving that such false claims were made knowingly.” The legislation even applies retroactively.

Efforts to expand New York’s FCA as envisioned in S.5319/A.2506 shock the conscience, as

the entire basis for false claims acts is to root out fraud or willful misconduct. In fact, the federal FCA was signed into law over 150 years ago, in 1863, by President Lincoln to combat fraud stemming from Civil War defense contracts. The NYSSCPA fully appreciates the utilization of the federal FCA and corresponding states' false claims act in combatting fraud and recovering monies to the benefit of government. However, there must be limits!

Efforts to penalize taxpayers whose noncompliance is not willful under the FCA cannot stand. If legislation such as the S.5319/A.2506 is ultimately enacted, well-intentioned taxpayers could be dragged through the mud and be forced to defend themselves in expensive litigation or to reach a settlement in order to avoid negative public exposure. In addition, the New York State Department of Taxation and Finance already has the legal authority to levy penalties on taxpayers whose noncompliance is not willful—substantial underpayment penalty, negligence penalty, and so forth.

Of major importance to the NYSSCPA, the legislation would have a chilling effect on the profession in New York. CPAs have a duty to their clients. This duty dictates that all tax laws, regulations and guidance documents are to be adhered to at all times. There are, however, instances when gray areas arise with regard to tax laws, regulations and guidance documents, and well-intentioned CPAs are required to take good faith positions. Such private or government overreach would certainly have a detrimental impact on the profession and may result in many CPAs choosing another state to work in. At a time when New York's economy is struggling, this is not the message we want to send to hardworking, New York-based CPAs.

As referenced above, this legislation was one of the NYSSCPA's top priorities during our annual Lobby Day. The NYSSCPA Lobby Day Team met with both the Assembly and Senate sponsors of S.5319/A.2506 and expressed our concerns. Due to NYSSCPA's efforts, this bill did not move forward in either the Senate or the Assembly.

Recently, the NYSSCPA authored a letter to the governor urging him to veto [S.4730](#). The NYSSCPA also strongly suggested that the Governor alternatively urge chapter amendments in order to achieve the legislation's stated goals in a more narrowly tailored manner. The bill's intention is aimed at filling a loophole in the New York FCA to ensure that individuals and businesses who knowingly fail to file tax returns are liable under the law. The NYSSCPA's Barry states, "Filling this loophole is a noble purpose, but it cannot come at the expense of reasonable limitations and fundamental fairness."

The letter suggests that the governor and the legislature reevaluate the term "obligation" in the bill's text, due to its broad and vague language, and that it provides no explanation as to what it means in the context of the New York Tax Law. The letter also states significant concerns related to the retroactive nature of the legislation. The bill fails to allow sufficient time for due process, as it states an immediate effective date. [Read the letter to the New York State Governor.](#)

[Learn more about the NYSSCPA Legislative Agenda.](#)

STATE AND FEDERAL UPDATES

2021 Legislative Session Ends: The New York State Assembly and Senate have concluded their legislative duties for the 2021 calendar year. As Assembly Speaker Heastie and Senate Leader Stewart-Cousins closed their respective chambers, the members returned to their home districts. The Legislature passed a \$212 billion budget, bills on criminal justice, reforming gun control, protecting the environment, elections reforms, housing reform, pandemic recovery

funds, rent relief, legalizing recreational marijuana and housing reform. Although the Legislature's doors are shut, Senate Leader Stewart-Cousins stated that the Legislature will return if ongoing discussions on outstanding matters are ready to be voted on.



2021 Primary Election Results

From Brooklyn to Buffalo, this year's primary election results showed an increase of younger candidates winning over established politicians. Learn more about the primary election winners:

- **Upstate Winners**, *Spectrum 1 News*
- **New York City Winners**, *The Washington Post*
- **Hudson Valley Winners**, *The Journal News/LoHud.com*

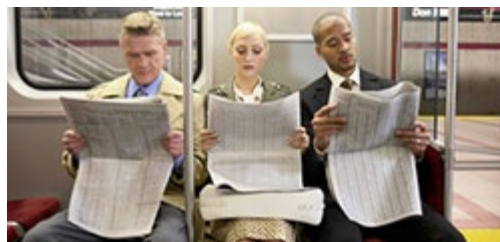


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ARTICLES ON LEGISLATION & ADVOCACY

To keep you informed on the latest news.

- **It's Official: NYS Lawmakers Pass Recreational Cannabis Legalization**, *The Trusted Professional*
- **Biden Unveils \$1.8 Trillion 'American Families Plan,' Includes Proposal to Regulate Paid Tax Preparers**, *The Trusted Professional*
- **Newly Passed State Provision Offers Way to Bypass SALT Deduction Cap**, *The Trusted Professional*
- **NY Rep. Souzzi Mulling One-Time Wealth Tax, Dubbed "Patriot Tax"**, *The Trusted Professional*



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Have a Leg/Reg Issue?

Your issues matter to us! The NYSSCPA Government Relations Team wants to help you be heard in the halls of power. If you have a suggestion for our legislative agenda, if you are having trouble getting through red tape, or would like assistance reaching your local or state officials, please email Media & Government Relations Manager Jovan C. Richards at jrichards@nysscpa.org.



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THE CPA PAC & LEGISLATIVE TASK FORCE

The **CPA Political Action Committee** serves as the NYSSCPA's collective voice in Albany. The NYSSCPA distributes PAC donations to New York political candidates who understand the profession's needs and concerns. When you **donate to the PAC**, you help send a clear message to legislators that issues important to the profession affect the wider business community and the public interest—and that we will be heard.



The **Legislative Task Force** (LTF) is responsible for the monitoring and evaluation of New York state laws, legislation, rules and regulations related to the accounting profession, in particular, and business, in general. The LTF, in conjunction with the Society's legislative staff, proactively recommend amendments and changes to existing legislation and regulations, on a continual basis.

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