

# NYSSCPA

**SUFFOLK Chapter News**

**Vol. 43 No. 5 • December 2013**

## *President's Message*

It is hard to believe that the holiday season is upon us. Tax season is only a few short weeks away. Even though the IRS announced that the 2014 tax filing season, which was scheduled to begin on Jan. 21, 2014, will be delayed approximately one to two weeks as a result of the recently-concluded federal government shutdown, we have to be prepared for a challenging busy season.

The federal government shutdown occurred during the peak time the IRS uses to prepare its systems for the upcoming filing season. More than 50 IRS systems have to be programmed, tested, and deployed so they can handle the processing of nearly 150 million tax returns. Further delays are possible if another government shutdown materializes in 2014.

When legislators agreed on Oct. 16, 2013 to end the shutdown, they voted to fund the federal government

through Feb. 7, 2014, which means that they likely will have another budget clash in January 2014. The only thing we know for sure is that there will be a tax season, and the due dates for filing returns are not going to change.

November was another productive month for the Suffolk Chapter. Here is a recap of some recent chapter events:

On Nov. 7, the Estate and Financial Planning Committee held a seminar covering Asset Protection Techniques.

Nov. 14 was the date of The Young CPAs' joint event with the Nassau Chapter. Attendees left the event with some great methods to improve their public speaking skills.

The Suffolk and Nassau Chapter joined with the



Lawrence Lucarelli

## *Within this issue...*

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## President's Message

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Attorney/Accountant Networking Group to hold a networking event on Nov. 26. The event also served as a food collection for the benefit of Island Harvest.

There are several events planned to round out the year. The Estate and Financial Planning Committee is holding an Elder Law and IRA Planning update on Dec. 12. The Tax Committee will be holding its all-day Annual Tax Conference on Dec. 14.

The Toys for Tots pickup will take place at the office of Sheehan & Company, CPA P.C., on Dec. 13. As

one of the largest pickups in the state, this an amazing sight.

The chapter is a great way for CPAs to enhance their careers and network with other professionals. I encourage you to review the calendar of events and attend some of the chapter's upcoming events.

As always, please contact me, at the address below, or any of the other board members or committee chairs to get more involved in the chapter. I wish you a wonderful year ahead and hope this year brings you joy, good health and success in your career.

*- Larry Lucarelli*

### Special Offers from the Suffolk Chapter



#### SPONSORSHIP PROGRAM

Here's your chance to make the most of your membership! Sponsor one of our events and get in front of colleagues, referral sources, and potential clients.

**Step One:** Choose an event.

- golf outings
- networking events
- technical workshops
- informational seminars
- charitable events

**Step Two:** Become a sponsor. At a cost of **\$1,000** you receive:

- recognition in the Suffolk Chapter newsletter
- logo/recognition in all event flyers
- opportunity to speak at the event
- booth or table display space

To take advantage of this great offer, contact our Sponsorship Chair:  
 Thomas S. Pirro: (631) 472-7637; [tpirrocpa@optonline.net](mailto:tpirrocpa@optonline.net)

#### 2013-14 SUBSCRIPTION PLAN

Become a subscriber and save as much as \$300 on meetings! The tremendously discounted price of **\$99** covers the following chapter meetings:



September 2013	Banker/CPA Event
October 2013	Student Night
October 2013	Town Hall Meeting/Ethics panel
January 2014	Not-for-Profit Event
January 2014	Banker/CPA Event
May 2014	To Be Determined

Act now to get the full savings! Contact the Suffolk Chapter Treasurer:  
 Brian Michels, (631) 665-7040, [bmichels@sheehancpa.com](mailto:bmichels@sheehancpa.com)

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 Brightwaters, NY 11718

*(Can be used by any member of the firm)*

# *A Seller's Remedy, but with Potentially Harsh Rules and Limitations*

By **Stuart I. Gordon and Matthew V. Spero** | Rivkin Radler LLP

Nearly a decade ago, Congress amended the U.S. Bankruptcy Code to add a new section that was intended to benefit sellers of goods to failing or financially distressed companies. Under this new provision, Bankruptcy Code Section 503(b)(9), a seller of goods is entitled to an “administrative expense claim,” for the goods sold and received by the buyer in the 20 days before the buyer’s bankruptcy. This administrative expense claim gives the seller priority over other general, unsecured creditors. Although the specific statutory section is quite brief, there are a number of important issues that sellers must keep in mind to be able to rely on Section 503(b)(9) – and a number of important questions involving Section 503(b)(9) that still bedevil the courts.

## **The Statute**

Bankruptcy Code Section 503, which is entitled “Allowance of Administrative Expenses,” lists nine kinds of expenses that bankruptcy courts must allow as “administrative expenses,” which entitles the creditor holding such an expense to priority of payment. One of those expenses is described in Section 503(b)(9), which was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The text of Section 503(b)(9) seems quite clear. It provides that:

*[a]fter notice and a hearing, there shall be allowed administrative expenses... [for] the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.*

Thus, the statute authorizes an “administrative expense” priority claim for a seller of “goods” that are “received” by a debtor within “20 days” before the debtor’s bankruptcy filing in the “ordinary course” of the debtor’s business.

Certainly, much of this section – for example, the “20 days” and “ordinary course” requirements – seems rather clear. A surprising amount of litigation, however, has arisen over other provisions of this section. In particular, courts continue to struggle with the question of whether a seller has been selling “goods” within the meaning of Section 503(b)(9) and whether the goods that were sold were “received” by the debtor. Neither “goods” nor “received” are terms that are defined in the Bankruptcy Code.

## **What are Goods?**

In many cases, it is clear whether or not a seller is selling “goods” to a

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## *A Seller's Remedy* (cont'd)

buyer. For example, “services” are not goods and, therefore, the provision of “services” does not qualify a creditor for a Section 503(b)(9) administrative priority.

Although the Bankruptcy Code does not define “goods,” the Uniform Commercial Code does. It states that, generally speaking, goods are “all things . . . which are movable at the time of identification to the contract for sale.”

This definition, however, can still present difficult issues. For example, recently, the U.S. District Court for the Southern District of New York directed the Bankruptcy Court to further consider whether electricity sold by a vendor to a debtor qualified as “goods” for purposes of Section 503(b)(9). In its decision, the District Court noted that in the Section 503(b)(9) context, courts are in essence evenly split on whether or not electricity is actually a “good”.

Rulings such as this make it clear that creditors seeking to rely on Section 503(b)(9) may do so only where they have in fact supplied “goods” to the debtor.

### **When Does the Debtor “Receive” Goods?**

Another issue involving Section 503(b)(9) that continues to arise in the bankruptcy courts with some frequency is whether a debtor has

“received” the goods sold by the vendor. Where goods are shipped and delivered to the debtor’s warehouse or other facility, the goods certainly are “received.” But the debtor’s receipt is not as clear where a supplier “drop ships” goods purchased by a debtor directly to the debtor’s customers.

In one case, decided last August, the District Court of New Hampshire granted an administrative priority claim to a paper company that sold and shipped goods to the debtor purchaser itself. However, the Court denied the seller an administrative priority claim for goods that it drop shipped directly to the purchaser’s customers.

Given these and similar rulings, vendors that are aware of a purchaser’s financial extremis but willing to continue dealing with the purchaser might consider avoiding drop-shipping goods directly to the purchaser’s customers so that it could get the benefits of Section 503(b)(9) protection.

### **Questions of Timing**

In addition to the 20 day requirement contained in Section 503(b)(9), sellers seeking to assert a 503(b)(9) claim must keep all filing deadlines in mind. Some bankruptcy courts may impose specific deadlines for creditors to file Section 503(b)(9) claims; in other instances, a claim under Section 503(b)(9) may have to be filed with all other claims before the claims “bar

*(continued)*

## *A Seller's Remedy*

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date” (i.e. the deadline to file claims against the debtor).

Whatever the case, meeting the deadline is a crucial requirement to be able to assert a Section 503(b)(9) claim. Several years ago, one court denied a Section 503(b)(9) claim to the Goodyear Tire & Rubber Company when it determined that Goodyear had filed its Section 503(b)(9) claim too late.

The important message is that each case – and each court – may have different unique circumstances and requirements, and these deadlines should be assessed and followed so that 503(b)(9) creditors do not waive their rights.

Trade creditors with a claim against a bankrupt company may find more success by asserting a Section 503(b)(9) claim than by trying to “reclaim” the goods they have sold, especially where those goods have been resold or cannot be identified (because, for example, they have been co-mingled or fabricated.) It is

important to keep in mind, however, that even where a creditor is able to meet all of the requirements of Section 503(b)(9), the creditor only will have an administrative priority claim that the bankrupt debtor may – or may not – be able to pay. Where a bankruptcy estate is “administratively insolvent,” or where the bankruptcy court authorizes a “super priority” administrative priority claim that trumps a Section 503(b)(9) claim, the vendor may find that it is in the same position as the debtor’s other unsecured creditors. Still, it is clear that Section 503(b)(9) offers vendors certain advantages, and a supplier that invokes Section 503(b)(9) may be able to put itself in a more favorable position than general unsecured creditors.

*For further information about Section 503(b)(9) claims or about bankruptcy issues in general, please contact Mr. Gordon at (516) 357-3055, [stuart.gordon@rivkin.com](mailto:stuart.gordon@rivkin.com) or Mr. Spero at (516) 357-3593, [matthew.spero@rivkin.com](mailto:matthew.spero@rivkin.com).*

### *Catching Up With...*

#### Young CPAs

On Thursday, November 14, the Suffolk and Nassau Young CPAs held a joint technical event **“Power Up Your Public Speaking.”** The event was held at the offices of Marks, Paneth, & Shron. Our speaker for the evening was Marla Seiden, President of Seiden Communications, a full service public relations firm.

In this interactive workshop, participants received tips on how to improve public speaking skills and become powerful presenters. Marla stressed how important it is to conquer the fear of public speaking (which is often cited as the number one fear in America) and that in doing so young professionals will have the confidence to excel as their careers progress.

To break the ice, several volunteers participated in saying the phrase “I can’t believe it” stressed in six different styles to portray scenarios that the audience had to guess. We also learned style tips from a short clip of world champion public speaker Ed Tate. To close out the workshop, three volunteers made short presentations using the tips we had learned in the course. The exercises proved to be a fun way to learn and provided a relaxed environment to give feedback to those who volunteered.



Marla’s enthusiasm for her trade made for an enjoyable evening for all who attended.

#### Estate, Financial Planning

On November 7, the Estate and Financial Planning Committee conducted a program on “Recent Asset Protection Techniques that a Practitioner Needs to Know.” The morning event took place at Valley National Bank, Huntington Station. The instructors were Henry Montag, CFP, CLTC and Seymour Goldberg, CPA, MBA, JD, co-chair of the Estate & Financial Planning Committee.

The attendees enjoyed the program and the evaluations were great. This is the third program that was conducted at the Valley National Bank and we thank Savina Indelicato, Vice President of Valley National Bank for accommodating our chapter.

## *Catching Up With...*

### Members in Industry

On November 19, the Suffolk Chapter Members in Industry and the Nassau Chapter CFO committees co-hosted a presentation on Corporate Governance of Private Companies. The session was held at the newly-relocated offices of Nawrocki Smith LLP in the Bank of America building in Melville.

Ernest Patrick Smith, CPA/CFF/ABV, CVA, CFE from Nawrocki Smith LLP and Ira P. Halperin, Esq., CPA from Meltzer, Lippe, Goldstein & Breitstone, LLP briefed the guests on the importance of effective corporate governance in privately held companies. The session covered critical corporate documents as well as appropriate internal controls. The speakers shared their professional experience working with clients offering suggestions for Chief Financial Officers and practicing certified public accountants to avoid potentially costly mistakes from both an economic and personal perspective.

Despite the session receiving excellent reviews, turnout from our Suffolk Chapter members was light. The Members in Industry committee would consider running this informational session again in 2014.

### Not-for-Profit

There will be a meeting of the Suffolk Chapter Not-for-Profit committee on **December 12, 8 to 10 a.m.** at Cerini & Associates, 3340 Veterans Hwy., Bohemia.

We will be doing "Stories from the Trenches." GET INVOLVED! Please bring one or two financial statements (either issued by yours or another firm) so we can go through the various issues presented. Ken Cerini will be moderating the session.

We look forward to seeing you then.





## Mark Your Calendar...

### DECEMBER 12, 2013

Not-for-Profit committee meeting: Stories from the Trenches. Details on page 8.

### DECEMBER 12, 2013

Estate & Financial Planning committee meeting: Elder Law and IRA Planning Updates. Details on page 10.

### DECEMBER 14, 2013

Annual Tax Conference. Details on page 12.

### JANUARY 7, 2014

Estate & Financial Planning committee meeting: Estate Planning for the Medium-Sized Client. Details on page 13.

### JANUARY 9, 2014

Forensic and Valuation Services Committee Social Event: Networking in the Tropics (a.k.a. Hauppauge). Details on page 14.

### JANUARY 30, 2014

Cooperation with Bankers and Other Credit Grantors committee meeting: An Evening of Networking with Special Guest Speaker John Lizzo, LIA Economist. Details on page 15.

For up-to-the-minute chapter activities:

[www.nysscpa.org](http://www.nysscpa.org)

Search for the Suffolk Chapter under "About Us"

### Committee Chairs!

Make sure to get all future meeting dates to Felix Russo at [frusso@cabcpa.com](mailto:frusso@cabcpa.com)

# Estate Planning...

The NYSSCPA Suffolk Chapter  
Estate & Financial Planning Committee presents



## Elder Law and IRA Planning Updates

**Thursday, December 12, 2013**  
**8:00 – 10:00 a.m.**

(7:30 a.m. Registration & Continental Breakfast)

**at Courtyard by Marriott**  
**5000 Express Drive South, Ronkonkoma, NY**  
**Free! (Enrollment limited to the first 25 registrants.)**

**Speakers:**

David R. Okrent, CPA, JD | Law Offices of David R. Okrent  
Seymour Goldberg, CPA, MBA, JD | Goldberg & Goldberg, P.C.

**Level:** Intermediate

**Prerequisite:** Basic knowledge of estate planning

**Method of Presentation:** Lecture, questions and answers

**Subject Area:** Specialized knowledge and taxation

**Learning Objective:** To acquire knowledge on elder law issues and IRA issues

**2 CPE Credits (Course code: 29086414)**  
**Specialized Knowledge + Taxation**

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

*Please send registration form to:*

Seymour Goldberg  
Goldberg & Goldberg, P.C.  
20 Crossways Park North, Suite 412  
Woodbury, New York 11797  
516-222-0422  
[info.goldbergira@gmail.com](mailto:info.goldbergira@gmail.com)

Sponsored by



*Almost Time for Ho... Ho... Ho...*

The Young CPAs Committee proudly announces  
the 19<sup>th</sup> annual

**Toys For Tots  
Toy Drive**

to benefit the U.S. Marine Corps'  
Toys for Tots Program



The holidays are just around the corner! Please help us share the magic of the holiday season with the needy children of Long Island by participating in this year's drive.

Promotional materials and drop-off boxes will be available in the beginning of November.

The ceremonial pick up of the toys by the USMC is scheduled for **FRIDAY, DECEMBER 13<sup>TH</sup>**

at the offices of Sheehan & Company, CPA PC.

For more information regarding this wonderful event, please contact:

Cynthia Finn Barry, CPA  
Sheehan & Company CPA PC  
165 Orinoco Drive, Brightwaters, NY 11718  
Telephone: (631) 665-7040; Fax: (631) 665-7014  
Email: cbarry@sheehancpa.com

# Talking Taxes...

The NYSSCPA Suffolk Chapter Tax Committee invites you to the

## Annual Tax Conference



**Saturday, December 14, 2013**  
**8:30 a.m. – 4:30 p.m.**  
 (8:00 a.m. registration)

**at the Islandia Marriott**  
**3635 Express Drive North, Islandia, NY**

**Members: \$150 | Non-Members: \$250**  
**At door: Add \$25**

### Conference Topics & Speakers:

- **Federal Tax Update** | Robert Katz, JD, LL.M., Senior Partner, Katz, Bernstein & Katz, LLP
- **New York State Tax Update** | Timothy P. Noonan, Esq., Partner, Hodgson Russ LLP
- **Baby Boomer's Guide to Social Security** | Daniel G. Mazzola, CPA, CFP, CFA, Registered Investment Advisor, American Portfolios
- **FBAR and FATCA** | Eric L. Morgenthal, CPA, Esq., Law Office of Eric L. Morgenthal, PLLC
- **Executive and Deferred Compensation** | Louis Vlahos, Esq., Lead Tax Attorney, Farrell Fritz, P.C.
- **Affordable Care Act Update** | Kenneth Laks, CPA, MST, Principal, Albrecht, Viggiano, Zureck & Company, P.C.

**Participants will receive a FREE ADP-sponsored 2014 U.S. Master Tax Guide.**  
 Orders will be taken at the conference, and guides will be delivered by ADP.

**8 CPE credits** (Course code: 28608425)

Name: \_\_\_\_\_  
 Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 NYSSCPA Member? Y/N Member # \_\_\_\_\_

*Please register:*

**Online:** [www.nysscpa.org](http://www.nysscpa.org)  
 OR by **Phone:** (800) 537-3635  
 OR by **Fax:** (866) 495-1354  
 OR **Mail** the registration form to:  
 Foundation for Accounting Education  
 P.O. Box 10490  
 Uniondale, NY 11555-0490

# Estate Planning in 2014...

The NYSSCPA Suffolk Chapter  
Estate & Financial Planning Committee presents



## Estate Planning for the Medium-Sized Client (under \$5 million)

**Tuesday, January 7, 2014\***  
**8:00 – 10:00 a.m.**

(7:30 a.m. Registration & Continental Breakfast)

\*SNOW DATE: January 14, 2014

**at Citibank, N.A.**

**730 Veterans Memorial Hwy., Hauppauge, NY**

**Free! (Enrollment limited to the first 20 registrants.)**

**Speakers:**

David R. Okrent, CPA, JD | Law Offices of David R. Okrent  
Seymour Goldberg, CPA, MBA, JD | Goldberg & Goldberg, P.C.

**Level:** Intermediate

**Prerequisite:** Basic knowledge of estate planning

**Method of Presentation:** Lecture, questions and answers

**Subject Area:** Taxation

**Learning Objective:** To acquire knowledge on estate planning for the medium-sized client

**2 CPE Credits (Course code: 29086415)**  
**Taxation**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

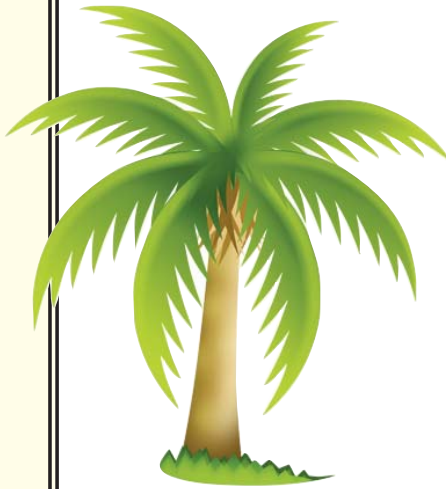
E-mail: \_\_\_\_\_

*Please send registration form to:*

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Goldberg & Goldberg, P.C.  
20 Crossways Park North, Suite 412  
Woodbury, New York 11797  
516-222-0422  
[info.goldbergira@gmail.com](mailto:info.goldbergira@gmail.com)

# Heating Up Your Networking...

The NYSSCPA Suffolk  
Forensic and Valuation Services Committee  
invites you to



## Network in the Tropics (a.k.a. Hauppauge)

Thursday, January 9, 2014  
6:00 to 8:00 p.m.

at the offices of  
**Albrecht, Viggiano, Zureck & Company**  
25 Suffolk Court, Hauppauge, NY 11788

\$20 per person

Join us for our first networking event of 2014.

Dinner provided by  
**Tropical Smoothie Café**  
Wine and beer will be served.



For information: contact Wendy Valentino  
wvalentino@cohengreve.com | (516) 877-1900

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

*Please make checks payable to NYSSCPA  
Suffolk Chapter and mail to:*

Wendy Valentino CPA/CFF, CFE  
Cohen Greve & Company CPA, P.C.  
485 Jericho Turnpike, Mineola, NY 11501  
(516) 877-1900  
FAX (516) 742-0122  
wvalentino@cohengreve.com

# Networking with Bankers...

The NYSSCPA Suffolk and Nassau Chapter  
Cooperation with Bankers and Other Credit Grantors Committees  
invite you to the



**Annual Joint Nassau/Suffolk Chapter Meeting:  
An Evening of Networking  
with Special Guest Speaker  
John Lizzo, LIA Economist**

**Thursday, January 30, 2014  
6:00 – 8:30 p.m.**

**at Crest Hollow Country Club – Woodbury, NY**

**Networking | Cocktails | Buffet Dinner**

**Open to all NYSSCPA members, bankers, and other professionals**

\$60 in advance (cash or check)

\$70 walk-in (not pre-registered)

**RSVP required by January 16, 2014**

Please attach a list of names/business cards if paying for more than one attendee:

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

I am a:  CPA  banker  other

Number of people attending: \_\_\_\_\_

Enclosed amount: \_\_\_\_\_

*Please make checks payable to NYSSCPA  
Nassau Chapter and mail to:*

Neal Korenberg, CPA  
Castellano, Korenberg & Co., CPA's, P.C.  
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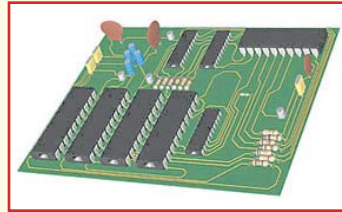
### Name That Thing...

1.



- A. thimble
- B. threader
- C. tracer
- D. hatpin

2.



- A. alternator
- B. curcuit board
- C. commutator
- D. cathode

3.



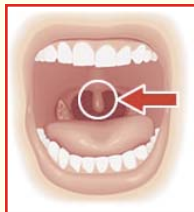
- A. fusilli
- B. tortellini
- C. rigatoni
- D. penne

4.



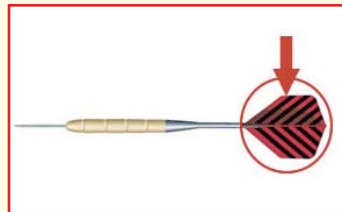
- A. bell
- B. receiver
- C. mouth
- D. nozzle

5.



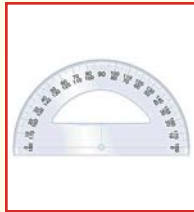
- A. palate
- B. uvula
- C. cartilage
- D. tonsil

6.



- A. fin
- B. feather
- C. tail
- D. flight

7.



- A. compass
- B. bevel square
- C. protractor
- D. heptagon

8.



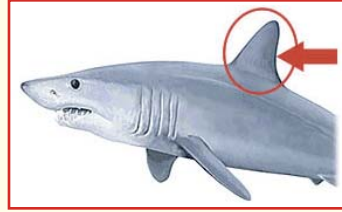
- A. heel
- B. bolster
- C. guard
- D. tang

9.



- A. tang
- B. tine
- C. slot
- D. point

10.



- A. dorsal fin
- B. pectoral fin
- C. caudal fin
- D. pelvic fin

SOURCE: merriam-webster.com

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### *Get Involved and Help Make a Difference*

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- |   |  |
|---|--|
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| <input type="checkbox"/> Community Affairs            | <input type="checkbox"/> General Taxation                  |
| <input type="checkbox"/> Construction Contractors     | <input type="checkbox"/> Golf Outing                       |
| <input type="checkbox"/> Cooperation with Attorneys   | <input type="checkbox"/> Management of Accounting Practice |
| <input type="checkbox"/> Cooperation with Bankers and | <input type="checkbox"/> Members in Industry               |
| <input type="checkbox"/> Other Credit Grantors        | <input type="checkbox"/> Membership Recruitment            |
| <input type="checkbox"/> Cooperation with Educational | <input type="checkbox"/> Not-for-Profit & Government       |
| <input type="checkbox"/> Institutions                 | <input type="checkbox"/> Public Relations                  |
| <input type="checkbox"/> CPE/Professional Development | <input type="checkbox"/> Real Estate & Construction        |
| <input type="checkbox"/> Emerging Technologies        | <input type="checkbox"/> Small Business                    |
| <input type="checkbox"/> Employee Benefits            | <input type="checkbox"/> Social                            |
| <input type="checkbox"/> Estate/Financial Planning    | <input type="checkbox"/> Young CPAs                        |

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