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CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

Dimensions

A CPA's Report for the Construction Industry

Summer 2017

Regulatory Compliance

Are Changes in Store at OSHA?

The change of administrations in Washington, D.C., has triggered many questions over the future direction of the Occupational Safety and Health Administration (OSHA).

The worker safety agency has always focused closely on the construction industry, which accounted for 21.4 percent of all fatal workplace injuries in private industry in 2015. That's a higher number of workplace fatalities than any other sector of the economy. (See page 3 for more on construction industry accidents.)

Regulatory Relief?

With regulatory relief one of the prominent pillars of the Trump presidential campaign, many are looking to the new administration to roll back some recent OSHA rulemaking they regard as regulatory overreach. The challengers achieved an early victory in April when the president signed a congressional resolution to repeal OSHA's so-called "Volks" rule.

The Volks rule extended OSHA's ability to enforce employers' injury recordkeeping requirements from six months to five-and-a-half years. Opponents argued the five-year extension would do nothing to improve workplace safety, but would merely lead to additional red tape and litigation. After both the House and Senate approved a resolution nullifying the rule, President Trump's signature made it final.

Just a few days later, OSHA delayed enforcement of another controversial initiative: the Crystalline Silica Standard for Construction. OSHA estimates 2.3 million workers are exposed each year to crystalline silica dust, which is generated when bricks, mortar, concrete or stone are cut or ground. The new OSHA standard would establish a much lower permissible exposure limit for construction workers – eight times lower than the existing standard.

The new standard was scheduled to go into effect June 23, 2017, but on April 6 OSHA announced it was delaying enforcement until September 23. The stated reason was to allow OSHA to "conduct additional outreach" to the industry, as well as to provide additional time to train compliance officers.

But the delay also will give opponents additional time to argue against its enactment. They question both the need for the rule and the feasibility of some of the new requirements, which are expected cost the average workplace about $1,524 a year.

Pending Challenges

Meanwhile, several other controversial OSHA initiatives are proceeding on schedule. At press time, a new rule requiring many employers to electronically submit information about workplace injuries and illnesses to an OSHA-operated website was still in effect. This was in spite of several pending court challenges from employer organizations and industry groups including the National Association of Home Builders.

The electronic submission rule also contains provisions designed to prevent employers from taking retaliatory measures against employees who report accidents. But employers contend the rule unlawfully limits their ability to conduct incident-based safety incentive programs or conduct routine post-accident drug testing.

Under the new rule, such practices could be interpreted as retaliatory actions. As a result, the opponents argue, the new rule will actually make workplaces less safe.

While it is not yet clear how these legal challenges will ultimately fare, a federal court has ruled the initial electronic reporting deadline of July 1, 2017, can remain in effect while the cases continue.

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Could Your Contracting Business Qualify?

Is your contracting business over-looking a potentially lucrative tax credit? Many contractors don't realize that some of the work they do might qualify for the federal Credit for Increasing Research Activities, more commonly referred to as the R&D tax credit. In fact, some experts estimate that less than a third of companies that qualify for the credit actually take advantage of it.

The reasons some companies overlook the R&D credit include misconceptions about whether they qualify and the complexity of the documentation that's required. In addition, for many years the R&D credit was a temporary provision, subject to congressional renewal every few years. This made it difficult for companies to rely on the credit in planning long-term tax strategies.

Recent Developments

This situation changed in late 2015 with passage of the Protecting Americans from Tax Hikes (PATH) Act. The PATH Act made the R&D credit permanent and also modified it to make it more accessible – and potentially more advantageous – to some companies.

In the past, the Alternative Minimum Tax (AMT) made it impractical for many companies to claim the R&D credit since their AMT liability would wipe out any income tax savings they achieved. Now, however, qualifying small businesses (those with less than $50 million in average gross receipts) can apply the R&D credit against their AMT obligation as well.

The PATH Act also added a startup provision that allows certain small businesses to apply the credit against some of their payroll taxes. This provision went into effect just this year. To qualify for the provision, the business must have annual gross receipts of less than $5 million and no gross receipts prior to the most recent five years.

Qualifying Activities and Expenses

Although the term "R&D" conjures up images of high-tech laboratories, many of the design, experimentation and problem-solving activities associated with construction projects could meet the R&D credit requirements. To qualify, the activities must meet four criteria:

1. *Permitted purpose* – The activity must be done as part of developing or improving a business component, such as project designs or plans. Examples include trying a new material or experimenting with a new construction technique.

2. *Technological in nature* – The improvement must rely on principles of science or engineering. This includes construction-related disciplines such as electrical, mechanical and structural engineering.

3. *Uncertainty* – The activity must be intended to eliminate some uncertainty regarding the design, method or the company's capability. Note that this does not have to be groundbreaking industry research. Experimenting with materials or methods that are simply new to your company could qualify under the right circumstances.

4. *Experimentation* – The activities must involve some form of experimentation, such as computer modeling, field tests or even systematic trial and error.

Many functions associated with design-build projects could qualify, provided all other conditions are met. Qualifying expenditures include wages, supplies, materials and in some cases the costs of paying for contract research by third parties.

Funding and Risk

There are important exceptions that could make some R&D expenditures ineligible for the credit. The most common exception is for funded research – in other words, research for which the contractor is specifically reimbursed regardless of the outcome.

On a time and materials contract, for example, the customer is actually funding the research. Because the contractor is not at risk of losses if the research is unsuccessful, the R&D credit would not be available. On the other hand, a fixed fee contract shifts the risk back to the contractor, making the contractor eligible for the credit.

Simplified Computation

Another stumbling block that often discouraged contractors from filing for the R&D credit was the complicated calculations the IRS required to compute the credit. This burden was eased several years ago with the introduction of a new Alternative Simplified Credit (ASC).

Unlike the traditional method, which can require financial information dating back to the 1980s, the ASC can be calculated using qualified research expenses for only the current year and the prior three tax years.

What's at Stake

The size of the R&D credit can vary significantly, but it typically ranges from 4 percent to 10 percent of the qualifying research expenditures. According to the IRS, 341 construction companies filed for the R&D credit in 2013. Their average credit was almost $83,000.

The qualifying criteria are fairly stringent and the calculations are not simple, even under the ASC. Nevertheless, a potential tax credit of that size is probably worth investigating.

To learn more about qualifying for the R&D credit, please call us to schedule a consultation.

Focus on Safety

OSHA's Top 10 Violations and "Fatal Four" Hazards

According to the U.S. Bureau of Labor Statistics, a total of 4,379 fatal workplace injuries were recorded in private U.S. industry in 2015. One out of five deaths — or 937 of them — occurred in the construction industry.

This represents a slight increase over the previous year and was the highest total since 2008. As is generally the case, the construction industry accounted for a greater share of workplace fatalities than any other sector.

What types of accidents led to the most fatalities? Among all industries, transportation incidents, particularly roadway accidents, are by far the leading cause of worker fatalities every year. But when we exclude vehicle accidents and focus on accidents that occur directly on construction sites, falls, slips and trips are always the leading cause of fatalities.

Among all construction trades, roofers and structural iron and steel workers reported the highest fatal work injury rates. Among roofers, there were 39.7 fatal injuries for every 100,000 full-time equivalent employees (FTEs). For iron and steel workers, the rate was 29.8 fatalities per 100,000 FTEs.

The Big Picture

Looking beyond fatalities to consider all types of injuries and hazards among all industries, the Occupational Safety and Health Administration (OSHA) annually publishes a list of its top 10 most cited workplace safety violations. For the federal fiscal year ending Sept. 30, 2016, the top 10 most frequently violated OSHA standards were:

1. Fall protection
2. Hazard communication
3. Scaffolding
4. Respiratory protection
5. Control of hazardous energy (lockout/tagout)
6. Powered industrial trucks
7. Ladders
8. Machinery and machine guarding
9. Electrical – wiring methods
10. Electrical – general requirements

Fatal Four Hazards

Because of the construction industry's relatively high accident rate, OSHA has given special attention to the leading causes of fatal accidents on construction sites. According to OSHA, four types of hazards account for almost two-thirds (64.2 percent) of all construction workplace accidents. These hazards – which OSHA sometimes refers to as the "Fatal Four" or the "Focus Four" – are:

1. *Fall hazards* – These include unprotected sides or holes, improperly constructed walking or working surfaces, and failure to use proper fall protection. These accounted for 38.8 percent of construction deaths in 2015.

2. *"Struck by" hazards* – These include falling objects due to rigging failure, loose or shifting materials, equipment malfunctions, and vehicle or equipment strikes. These accounted for 9.6 percent of 2015 construction fatalities.

3. *Electrocution hazards* – These are caused by contact with overhead power lines or live circuits in panels, poorly maintained cords and tools, and lightning strikes. In 2015, these hazards led to 8.6 percent of all fatal construction accidents.

4. *"Caught in" or "caught between" hazards* – These include trench or excavation collapses as well as workers caught between moving or rotating equipment, or caught in collapsing structures or materials. These types of hazards led to 7.2 percent of 2015 construction fatalities.

OSHA, along with numerous private worker safety organizations, offers a wide range of training programs, worker protection equipment and risk mitigation products designed specifically to address these four critical areas of concern. For more information, visit the OSHA website at https://www.osha.gov/dte/outreach/construction/focus_four.

OSHA Changes

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Rising Costs

Despite challenges to some rules and the possible rollback of others, OSHA compliance and the rising costs of noncompliance continue to be significant concerns in the construction industry.

In 2015, Congress required federal agencies to adjust their civil penalties to account for inflation. As a result, OSHA's maximum penalties, which had last been adjusted in 1990, increased by 78 percent, and now are readjusted annually.

The penalty for serious violations is now $12,675 per violation, while the penalty for willful or repeated violations can be as high as $126,749 per violation.

Naturally, most contractors' primary worker safety concern is the desire to run a safe job site. But the rising costs of OSHA fines must also figure into your decision-making.

If you have questions about OSHA or other regulatory compliance issues, please call us for an appointment.

IN 1944, Thomas Saltmarsh, Harold Cleaveland and Charles Gund pooled their talents and modest resources to form a partnership for the practice of accounting. The three founding partners soon established a client base that included large and small businesses, as well as commercial and governmental accounts. Their success was attributed to their guiding principles of honesty and integrity, accuracy and thoroughness, quality client service and, most importantly, the belief that service to the community is an individual as well as a corporate, responsibility.

TODAY, Saltmarsh offers a variety of services — from accounting and taxation to consulting — all based on the Firm's mission statement and core values. It is this philosophy, based on the principles of yesterday, that has helped the Firm grow to one of the largest locally-owned certified public accounting firms in the Southeast.

SALTMARSH CONSTRUCTION ADVISORS are here to meet the specific needs of contractors, home builders and related trades within the construction, real estate and development industries. Because we truly understand construction accounting and financial management, contractors and developers of all sizes and different trades rely upon our experience. Need assistance? Contact the construction advisors at Saltmarsh or call us today at 800.477.7458.

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Watch the Overhead — Even in Good Times

By almost every indicator, now is the time for construction businesses to be gearing up for growth. For example:

- The U.S. Department of Commerce expects total annual construction spending in the U.S. will top $1.19 trillion in 2017. This is up more than 40 percent over the levels of five years ago.
- The American Institute of Architects' Architectural Billing Index, another leading indicator of future spending, has been in positive territory most recent months.
- Washington is abuzz at the prospect of $1 trillion in proposed new infrastructure spending.

Ironically, now is also a time when it's important to keep a close eye on overhead. With revenues increasing, it's easy to allow overhead expenses to creep upward, eroding profits and diminishing your ability to bid competitively. In addition, bad habits ingrained during good times can be difficult to break when growth slows again.

One key to managing overhead is a strong job-costing program. Capturing job costs fully and breaking them down accurately can help you gain a better understanding of your operations and capabilities.

Another key to managing overhead is accurate budgeting: setting and tracking goals and adjusting course as needed. Here are four basic steps in this process:

1. Get to know your overhead expenses. Put together a comprehensive checklist and then track and analyze expenses monthly.
2. Learn from what others are spending. Industry surveys and networking can help you set realistic goals.
3. Trim the catch-all categories. Whenever possible, reassign costs from the general to the specific and from indirect to direct.
4. Rely on your people. Your employees know where the waste is. Establish a strong cost-control committee with company-wide participation, documented meetings and specific proposals to drive out costs.

Start gearing up for future growth now by focusing on these four budgeting steps.

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