

Anchin Construction Digest



Information and Insights for
Construction Industry Executives
4th Quarter 2011

Tax Tips to Maximize Your Year-end Planning

By Phillip M. Ross, CPA

Tax planning for 2011 is particularly important for construction company executives. Some specific tax provisions expire after this year and certain others currently in effect may not be available in 2012. Please consult your tax advisor to maximize potential deductions, credits and other changes.

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Pay-for-performance Bonuses Can Boost Morale, Productivity

By Marc A. Newman, CPA

A performance-based bonus plan can motivate employees and align their efforts more closely with company goals, leading to a stronger work ethic and increased profitability. Such a plan can be challenging to establish, but worth the effort if performance and profits increase.

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Calls for Entry: MWBE Building the Future



Calls for Entry are now available at www.anchin.com for the third annual awards event, Building the Future, that recognizes top-performing Minority/ Women-Owned Business Enterprises (MWBEs) that serve the area's architecture, engineering and construction industries. This annual event is sponsored each year by Anchin's Construction Services Team in cooperation with the New York Building Congress.

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Consider Mediation to Resolve Next Construction Dispute

By Joseph R. Vieira, CPA

It's going to happen. A construction dispute, that is. You can hope that every job from here on out goes smoothly. But, if you stay in business long enough, it's highly likely you'll encounter a situation with an owner or developer that can't be resolved with a simple chat.

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Year-end Planning

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Two provisions that are scheduled to expire after 2011:



Phillip Ross, CPA

- **Bonus Depreciation:**

Qualifying assets acquired after September 8, 2010, and placed in service before 2012, are eligible for

depreciation of 100 percent, according to the 2010 Tax Relief Act. Previously, the rate was 50 percent. Bonus depreciation is scheduled to return to 50 percent for assets placed in service starting in 2012 and is currently scheduled to expire after 2012.

- **Enhanced Expensing:** The aggregate Section 179 expensing limitation is set at an all-time-high of \$500,000 for tax years beginning in 2010 or 2011. Thereafter, the cap is lowered to \$125,000 (adjusted for inflation) in 2012, with a subsequent reduction to \$25,000 (adjusted for inflation) scheduled for tax years beginning after 2012. The amount of aggregate qualifying property placed in service in 2010 or 2011 is similarly at an all-time-high of \$2 million. This amount drops to \$500,000 for tax years beginning in 2012 and \$200,000 after 2012.

These three provisions have been extended from 2010 through December 31, 2011. Act now to take advantage of them, if they apply to your business:

- **Research Credit:** This credit generally is equal to a portion of qualified research expenses. Savings can be substantial, even if it is complicated to calculate; your tax advisor can provide guidance. The 2010 Tax Relief Act extended the research credit (also commonly

referred to as the “research and development” or “research and experimentation” credit) through 2011, and some observers believe it may become permanent. Because “R&D” has been broadly defined in the Act, this credit can provide tremendous benefits to architects, engineers and contractors.

- **Work Opportunity Credit:** This credit benefits businesses that hire employees from certain disadvantaged groups, such as ex-felons, food stamp recipients and disabled veterans. The credit equals 40% of the first \$6,000 of wages paid to qualifying employees and \$12,000 for wages paid to qualified veterans.

- **Retention Credit:** Employers who hired workers in 2010 may be eligible for the retention credit. The tax savings per qualified retained worker are equal to the lesser of 6.2% of wages paid to the worker during the 52 consecutive-week retention period or \$1,000. This credit generally applies to workers who qualified for payroll tax forgiveness under the Hiring Incentives to Restore Employment (HIRE) Act of 2010.

In order to claim the business credit in 2011, you must create HIRE Act records with each qualified employee’s date of hire to determine when the employee reached the consecutive 52-week mark. Other records include signed W-11 forms on file with appropriate payroll and tax records.

This provision affects tax years 2010 through 2013:

- **Health Care Coverage Credit For Small Business:** Employers who pay group health coverage premiums may receive a maximum credit of 35%. Employers must contribute at least 50% of the total premium or of a benchmark premium. The full credit is available for employers with 10 or fewer full-time equivalent employees

(FTEs) and average annual wages of less than \$25,000 per employee. Partial credits are available on a sliding scale to businesses with between 10 to 25 FTEs and average annual wages of less than \$50,000.

The following provisions expire after December 31, 2011, unless extended by Congress; consider whether or not they are applicable to your business:

- The R&D credit for qualified research expenses (see above);
- The 100 percent of gains for small-business stock acquired before 2012 is excluded from tax, under Code Sec. 1202;
- The Work Opportunity Tax Credit available to employers under Code Sec. 51;
- Adjustment of the basis of stock of an S corporation made as charitable contributions of property; under Code Sec. 1367(a) and,
- Various energy-related incentives.

The widespread expectation of tax increases in 2013 may prompt consideration of accelerating income into 2012. This likely strategy needs to be considered now when deciding whether to defer 2011 income into 2012. You want to balance overall tax liability between 2011 and 2012 and maximize use of the current rate structure.

Year-end tax planning always involves juggling a number of moving parts. In 2011, plans are complicated not only by an economy that demands consideration of loss techniques and other “downturn” strategies, but also by expiring provisions and upcoming changes in future years. Your tax advisor can explore these and other considerations with you. •

Pay-for-performance

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Something for Everyone



Marc Newman, CPA

Traditional one-size-fits-all bonuses are predictable, readily understandable and easy to administer. All employees earn the same bonus amount, regardless of their contribution to the project or the firm.

Such bonuses are often viewed by employers as part of their salary and do little to boost productivity or build loyalty. Plus, many construction companies have done away with them entirely to save money, leaving little to no additional financial incentive for employees to go the extra mile to push business growth up 15%.

Specific Activities

If you want to motivate your employees and align their efforts more closely with company goals, consider changing your year-end bonus plan (assuming it still exists) to a performance-based bonus plan. After all, most employees will be extremely interested in acquiring bonuses for themselves if the company posts that aforementioned 15% growth.

Developing a performance-based plan that works can be a challenge for construction companies, however. You should tie bonuses to specific activities

that will lead to company success. The areas you target for improvement will depend on your situation, but they could include:

- Improved time to completion,
- Decreased overtime,
- Documented improvements in customer satisfaction, or
- Decreased expenses or labor hours.

Just be sure to communicate with your employees about their eligibility for the bonus pool and indicate that bonuses are discretionary. You don't want to commit yourself to bonuses on a couple of jobs if you have multiple problem projects or a lack of backlog.

Threshold Profit Levels

While you're selecting your goals, you'll also need to decide how you'll pay for the program. Some rewards pay for themselves. If a crew brings a job in with 10% fewer hours than you bid, for instance, that savings goes straight to your bottom line, and you can give some of it back to your employees in the form of bonuses.

Unfortunately, improvements such as heightened customer satisfaction don't show up on the balance sheet immediately or directly. Thus, you'll need to set threshold profit levels for the company to meet before bonuses are paid.

Knowing your break-even margin will make it easier to establish these thresholds. You reach the break-even

margin when your projects generate enough gross profit to cover fixed expenses. Armed with that information, you can determine how much extra margin is available for incentive pay.

No Sacrifice

Two other important considerations in developing performance-based reward systems are timing and quality.

If you wait until the end of the year to give bonuses earned in June, the connection between the improvement and the reward could be lost. Instead, consider making your bonus plan pay out semi-annually - as long as you make it clear that no bonuses will be awarded unless goals are met each period. Alternatively, you might consider a job-based system that awards bonuses on criteria specific to each project.

Emphasize, too, that you won't sacrifice quality or safety. It's all well and good to reward people for doing a job quickly, but if they're cutting hours by cutting corners, they're actually hurting your bottom line.

The Edge

Motivation is, of course, important in every kind of business. But, on a construction project, a motivated workforce can mean the difference between a job that barely meets its profit expectations, if at all, and one that markedly outperforms those expectations. A carefully sculpted pay-for-performance bonus plan could give you that edge. •

Call for Entries: MWBE

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Launched in 2010, this event has now recognized over 30 MWBEs as well as their corporate advocates for their continued success and contributions to the field. Awards will be given in three categories: Fastest Growing MWBEs, Outstanding Community Service, and Corporate Advocacy. The Corporate Advocacy Award is designed to honor the individual or organization that has gone beyond the expected to promote the MWBE community. Nomination forms for each award category are

available at www.anchin.com and will be accepted until Wednesday, February 29, 2012.

The 2012 breakfast event is scheduled for Thursday, May 3, at Club 101, 101 Park Ave., New York, NY. Breakfast and networking will begin at 8 a.m. with the awards program starting at 9 a.m.

Firms compete for the Outstanding MWBE recognition in two different revenue categories: those with annual revenues less than \$10 million and those with annual revenues greater than \$10 million for the previous three years. Awards are made to outstanding

performers in the fields of general contractor, subcontractor, construction manager, supplier, architecture and engineering. One award will also be given for each revenue category for outstanding public service. All submissions are judged by industry executives.

Firms entering the competition must be certified by a relevant government agency; proof of certification must accompany your submission form. Winners in past years have included firms from throughout New York, New Jersey and Connecticut. •

Mediation

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Joseph Vieira, CPA

In such situations, lengthy and expensive litigation or binding arbitration may seem inevitable. But there's another alternative to consider: mediation.

A Selected Voice
In mediation, a neutral mediator facilitates a settlement that's acceptable to both parties. The mediator meets with the parties in informal joint sessions - and possibly separately - to help them explore relevant facts, issues, positions, needs and options.

A mediator might identify obstacles, point out overlooked issues and develop resolution strategies. The mediator, however, doesn't give legal advice or resolve the dispute. Instead, the parties must attempt to reach a settlement.

The parties to the dispute select the mediator - typically a practicing attorney, retired judge or other professional. Working with a mediator who has experience and expertise in real estate and construction can expedite the process and foster the introduction of options not previously considered.

Several Stages

Typically, the mediator begins with an opening statement, which includes identifying the attendees and reviewing the procedures, ground rules and goals. The parties then make their

opening statements, usually describing their understanding of the dispute, presenting their cases and proffering ideas for resolution.

Next comes the joint discussion in which the mediator speaks with the parties about the information in their opening statements and determines which issues to address. Each party then meets separately to assess the strengths and weaknesses of their respective positions.

At the joint negotiation stage, the mediator reconvenes the parties to negotiate face-to-face. If an agreement can be reached, the parties put it in writing and either sign the document or have their attorneys review it. Such agreements, once entered into, are enforceable as contracts. If no agreement results, the mediator reviews the process and discusses available options, including another mediation session, arbitration or litigation.

Less Adversarial

The mediator takes a neutral stance, so energy is spent collaborating with the other party rather than trying to persuade the mediator. In this way, mediation is less adversarial than either arbitration or litigation.

What's more, lawsuits can take months, if not years, and be very expensive, while mediation rarely lasts longer than several days. And parties can speak for themselves, which can lead to creative solutions not possible in an adversarial setting. A mediator's evaluation of the strengths and weaknesses of a case can change perspectives about the odds of winning

in court, paving the way for settlement.

Further, mediations are conducted confidentially. Statements and evidence used in mediation generally can't be admitted as evidence in subsequent litigation, and mediators can't be compelled to testify. Avoiding a courtroom also means parties aren't subject to legal precedents or the rigid structure of litigation. In addition, mediation doesn't involve formal rules of evidence or the question-and-answer format of a trial.

Finally, mediation is often used with the understanding that the parties will move to arbitration if both don't come away from mediation satisfied.

Arbitration Avenue

Arbitration tends to be less formal than litigation, but it can include discovery and the use of legal standards. Before the arbitration, the parties make stipulations regarding locale, confidentiality, rules of evidence and issues to be considered. Each party then presents evidence, including testimony and arguments, and can cross-examine witnesses.

Unlike in mediation, where the parties themselves reach a consensus, the arbitrator renders a final and typically binding decision. Further, the rules in arbitration can limit damages, restrict the time limits for filing a claim, and impede information sharing.

In an industry as wrought with conflicts as construction, it's important to remember all of your options for resolving disputes. Mediation may save you time in the short term and money in the long run. •

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Your Expert Partner
Accountants and Advisors

Anchin, Block & Anchin LLP
Accountants and Advisors

1375 Broadway, New York, NY 10018
212 840.3456 • www.anchin.com

Marc A. Newman, CPA, marc.newman@anchin.com
Phillip M. Ross, CPA, phillip.ross@anchin.com
Joseph R. Vieira, CPA, joseph.vieira@anchin.com

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