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CONSTRUCTION INDUSTRY ADVISOR

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Tax planning

CARES Act provisions may boost cash flow

The Coronavirus Aid, Relief, and Economic Security (CARES) Act may be best known for its provisions designed to shore up the economy as the nation copes with the COVID-19 pandemic. These include distributing Economic Impact Payments to individuals and offering Paycheck Protection Program (PPP) loans to businesses.

But the act also includes several provisions that can help construction companies (and other businesses) reduce their tax bills and, thereby, boost their cash flows. In many cases, this tax relief is retroactive, which may allow your company to either 1) amend its prior-year tax returns and collect refunds of taxes paid in those years, or 2) file Form 3115 ("Application for Change in Accounting Method") and claim "catch-up" deductions on this year's return. Here are a couple of such tax-reduction opportunities offered under the CARES Act.

Excess business losses

The Tax Cuts and Jobs Act of 2017 (TCJA) set a cap on business loss deductions by noncorporate taxpayers. For 2018 through 2025, the TCJA limited deductions for net business losses from sole proprietorships, partnerships and S corporations to $250,000 for individuals and $500,000 for joint filers. Losses in excess of these thresholds (which are annually indexed for inflation) may be carried forward to future tax years under the net operating loss (NOL) rules.

The CARES Act provides some relief from the limit on deductions of business interest expense.

The CARES Act suspended the limits on business loss deductions for the 2018, 2019 and 2020 tax years. So, if this provision reduced deductions on your 2018 or 2019 (if already filed) tax returns, you may be entitled to amend those returns to claim your full losses and obtain a refund of some or all of the taxes you paid in those years.

What's more, if these newly allowed losses create NOLs for 2018 or 2019, the CARES Act allows you to carry those NOLs back up to five years

and secure additional refunds. (The act also suspended the TCJA's prohibition of carrybacks for NOLs arising in 2018, 2019 and 2020, permitting those NOLs to be carried back up to five years.)

Business interest expense

The CARES Act also provides some relief from the limit on deductions of business interest expense. Under the TCJA, for larger construction businesses — that is, those whose average annual gross receipts for the preceding three years exceed $26 million (based on inflation indexing for 2019 tax returns) — these deductions are generally limited to 30% of adjusted taxable income (ATI). The CARES Act increases the limit to 50% for the 2019 and 2020 tax years (with special rules for partnerships).

The act also allows companies to calculate the 2020 limit based on their 2019 ATI. This may result in higher deductions for businesses whose income declines this year.

Construction companies and other "real property trades or businesses" may elect to opt out of the business interest limit provided they forgo certain accelerated depreciation benefits — including bonus depreciation. Once made, this election is irrevocable, which presents a problem for companies that previously opted out but now wish to claim bonus depreciation on newly eligible qualified improvement property (QIP).

Because of a technical error in the TCJA, QIP had been ineligible for bonus depreciation. The CARES Act corrected the error, retroactive to January 1, 2018.

Businesses that invested in QIP that was placed in service on or after that date have an opportunity to claim missed bonus depreciation deductions by amending their returns for 2018 or 2019 (if already filed) and obtaining a refund. Alternatively, they can file Form 3115 and claim a catch-up deduction on their 2020 returns.

PPP Flexibility Act relaxes rules for loan recipients

The Small Business Administration (SBA) launched the Paycheck Protection Program (PPP) in April 2020 to help companies struggling to remain operational during the lockdowns and restrictions necessitated by the COVID-19 pandemic. Construction companies have been among the leading recipients of PPP loans. In fact, as of mid-April, construction businesses had been approved for 114,838 loans totaling about $34 billion, according to an SBA report.

In June, the President signed into law the PPP Flexibility Act. This new law makes a variety of important adjustments that ease the rules for PPP borrowers. These include extending the covered period that allows borrowers additional time to exhaust their loan proceeds, and allowing employers to defer payments of 2020 payroll taxes, regardless of PPP participation. Contact your CPA for more information and assistance with the loan forgiveness process.

Unfortunately, companies that opted out of the business interest deduction limit can't take bonus depreciation on QIP.

To solve this problem, the IRS recently issued Revenue Procedure 2020-22. It permits companies that elected to opt out of the business interest limit in 2018 or 2019 to withdraw the election and take advantage of the CARES Act's changes. This may be an attractive option if the benefits of bonus depreciation on QIP outweigh any lost business interest deductions.

Keep those dollars available

To enhance cash flow, contractors should take advantage of these and other CARES Act provisions. They can help reduce this year's tax bill and claim tax refunds for previous years. If you believe your construction company may be eligible for relief, work with your CPA to follow the proper procedures. ■

Managing project scope: It's a full-time job

Construction projects often look solid on paper. But put boots and equipment on the ground and suddenly — or, more often, gradually — the job can go soggy as additional, unanticipated work seeps into other tasks. Sometimes you can get paid for this additional work if the owner will sign off on a change order. However, as you likely know, this is easier said than done.

To avoid getting stuck with extra costs that undercut your profit margin, and to improve the chances you'll be able to submit a viable change order, your construction company must excel at scope management. This has become even more important now that many jobs have been canceled because of the COVID-19 pandemic, while others may be far behind schedule after long delays.

Communicate and clarify

Optimal scope management starts in the preproject planning phase, which includes estimating and final bid submission. This is your chance to make sure everyone — from the owner to your team to anyone else involved — starts on the same page.

Begin with a clear discussion about what the owner wants vs. what you can deliver. Ideally, you can fulfill the demands of the job. But if you honestly believe you can't, say so. Also talk about any plans for bringing in subcontractors and how their work might lead to complications or delays. Last, point out any foreseeable problems and explain how your change order process works.

Assuming you win the bid and a contract is drawn up, review it carefully — even if you've done a hundred other similar jobs. Ensure the terms are as specific as possible and that they're compatible with the change order process you explained.

Stay vigilant

During the contract performance phase, when the job is underway, someone needs to regularly compare the original estimate to current job cost status. For smaller construction companies, this might be you, the owner. For bigger ones, the project manager needs to be actively involved in scope management — including monitoring and controlling costs.

Doing so will give you an idea of where you stand on the budget, as well as help trigger and expedite the change order process should a major modification arise. Regular job status reports can serve as your first line of defense against events and circumstances that push you out of your comfort zone.

The goal is to prevent scope creep: the slow and unplanned mutation of a project at the hands of a series of small scope changes. Individually, these changes may seem harmless but, together, they can affect the execution and ultimate outcome of your project — even to the point of causing its failure.

Stick the landing

The third phase of scope management is completion. As your experience has likely shown, this is

often when problems arise — when last-minute changes turn into long-running disputes.

So, rather than relax at this point, double your scope management efforts as you develop the punch list. One factor that often complicates the end of jobs is that the team members who were involved in the preproject planning phase have moved on to other projects. To the extent possible, bring them back on board for closeout, so you can ensure that everything you talked about in the beginning of the job has been (or is being) addressed at the end.

Beyond that, scope management comes down to all of the best practices that you've likely heard before. Communicate clearly with the owner. Document everything in writing, adding photos and video as necessary.

Evolve and adjust

Many contractors don't think about project scope until something gets really out of whack. The truth is, it's a full-time job that should begin before you even submit a bid. Be sure to keep an eye on your construction company's performance in this area and fine tune as necessary. ■

Apply the lessons of crisis and prepare for the future

The COVID-19 pandemic is unlike any other crisis we have faced in decades. As contractors continue to work back toward normalcy, it's critical to learn from recent experience and apply those lessons to preparing for the inevitable disasters and economic downturns of the future.

Review jobs, backlog and expenses

Take inventory of current jobs and be sure you understand all significant contractual provisions. Pay close attention to force majeure clauses, notice provisions and other contract terms that affect potential obligations, liabilities and costs. Also, realistically assess your backlog to determine its vulnerability to a slow economic recovery.

Consider whether your current and future jobs would be deemed "essential" in the event of a local shutdown. For example, projects that involve critical infrastructure or health care facilities are more likely to continue than those involving recreation or entertainment facilities. Use this assessment to develop contingency plans and to revise your project budgets and schedules, if appropriate.

Realistically assess your backlog to determine its vulnerability to a slow economic recovery.

In uncertain times, it's even more important to review expenses and eliminate or defer those deemed discretional. Put a plan in place to immediately reduce expenses if a project shuts down.

Revisit succession and continuity plans

Ensure that your construction company has an emergency succession plan in place in the event of a temporary or long-term change in leadership. Such a plan is vital for preserving a chain of command so work can continue, and clients, employees and suppliers are reassured.

Meanwhile, an operational continuity plan should address supply chain disruptions, as well as the impact of a crisis on subcontractors (if you're a general contractor). Devise contingency strategies should materials or labor become scarce or unavailable.

Implement best safety practices

Catch up on and implement the latest recommended safety protocols — including health screenings of workers and visitors, social distancing practices, and guidelines for cleaning and disinfecting work areas. You may need to revise how, where and when various tasks are performed to facilitate social distancing.

Infrastructure changes may also be necessary, such as:

- Reconfiguring the layout of entrances and exits,
- Modifying meal and break areas,
- Setting up handwashing stations, and
- Creating special storage areas for masks and other protective equipment.

Of course, good safety practices are effective only when followed. Be sure to undertake education, training and monitoring efforts to ensure compliance.

Consider remote options

During the onset of the COVID-19 crisis, employees of many types of companies made a sudden and often bumpy transition to working from home. Although this obviously isn't an option

for on-site construction workers, contractors can still hold virtual meetings rather than in-person ones and evaluate whether some employees might be able to work largely from home.

For example, preconstruction planning sessions could be held online. And, to minimize time spent in close quarters in a trailer, jobsite meetings could occur outdoors (weather permitting) or remotely as well.

Consult your advisors

To keep up with the latest on the pandemic and prepare for the future, you'll need competent legal and financial advice. Consult your attorney to ensure that your contracts provide as much protection and flexibility as possible. In addition, ask your CPA for help revising budgets, preparing cash-flow projections, and ensuring you make the most of available tax relief and other government assistance. ■

5 construction tech strategies for the new normal

Even before the COVID-19 crisis, technology was transforming the way construction companies go about their business. Whether this transformation was happening rapidly or gradually is up for debate, but there's little doubt that change was (and is) occurring.

The pandemic will likely accelerate the technological (r)evolution as contractors look for ways to work more safely and communicate more rapidly. Here are five tech strategies to consider as we move inexorably toward a new normal:

1. Going paperless. Creating and maintaining digital documents, rather than paper ones, facilitates remote work by making them accessible from virtually anywhere. But it also offers many other benefits — including increasing productivity; reducing errors; enhancing security; and preventing loss of data because of fires, floods and other natural disasters.

If you haven't yet gone fully paperless, now is a good time to start looking into doing so. To avoid overloading your company's network, consider using a cloud-based system rather than a virtual private network. Naturally, you'll want to choose a provider with strong security and backup features.

2. Collaborating virtually. There are a variety of tools that help project teams communicate and collaborate online rather than face-to-face — from video chat platforms to project management and document-sharing tools.

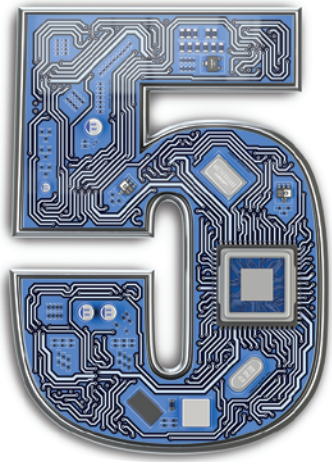
Also, expect to see the widening use of building information modeling (BIM). As you may be aware, this software uses 3-D or 4-D models to facilitate collaboration among parties and help resolve design conflicts and other issues before construction begins. BIM can also detect errors during the construction process to prevent delays and disputes.

3. Using robotic process automation (RPA). This is a type of artificial intelligence that automates repetitive, rule-based human tasks. When executed properly, RPA can reduce labor costs and errors, freeing up people for more critical activities.

Tasks that can be performed by RPA software include invoice creation, estimate generation, document management, vendor invoice processing, and even responding to certain customer or prospect inquiries.

4. Drones. Unmanned aerial vehicles, commonly referred to as "drones," have been getting quite a bit of attention in construction circles for several years now. They're increasingly being used for a variety of pertinent tasks that can facilitate social distancing — including job-progress monitoring, site surveys, inspections, security, and even transporting materials and tools.

5. Construction robotics. Robotics can perform certain tasks on a jobsite, such as building walls, operating equipment or vehicles, and keeping track of projects and providing security using video or still-frame cameras. If your construction company (like many) is controlling expenses tightly right now, you probably don't want to invest in robots. But keep this technology in mind long-term. ■



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Highlights of the CARES Act's Impacts on Employee Benefit Plans

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), includes complex, far-reaching provisions, many of which impact Employee Benefit Plans (EBPs). For both employers and employees, understanding the EBP-related provisions is essential to planning for the future. LaPorte has summarized the major provisions below.

Employer Contributions to Safe Harbor Plans

For the remainder of 2020, employers with safe harbor EBP plans may choose to stop making contributions. To do this, you have to amend the plan and notify the plan participants 30 days before stopping the contributions. Be aware that if you stop contributions, the plan may become subject to non-discrimination testing for 2020.

Defined Benefit Plans

For employers with a defined benefit plan, the CARES Act permits you to delay contributions until January 1, 2021. You will have to pay interest on the contributions between the original due date and the new January date.

Partial Plan Termination

Generally, if an employer has had to lay off 20% or more of EBP eligible participants, the participants who were affected become 100% vested. It is unclear yet whether this will affect organizations that laid employees off for the short term (eight weeks or fewer) until their state reopened.

EBP Participant Loans

Participants are able to take larger loans from their retirement accounts if those loans are coronavirus-related. Through September 28, 2020, the loan maximum has increased from a $50,000 maximum to the lesser of 100% of the participant's vested account balance or $100,000. EBP loan repayments due between now and December 31, 2020 are suspended for a year.

EBP Hardship Withdrawals

The CARES Act waives the 10% withdrawal penalty for early withdrawals of up to $100,000 for this year for both qualified retirement plans and IRAs. If the withdrawal is repaid within three years, income tax on the withdrawal is also waived. Otherwise, you can report the income from the distribution on income taxes over three years instead of just one.

Required Minimum Distributions

The Required Minimum Distributions (RMDs) for IRAs and employer-sponsored retirement plans have been waived for 2020. This means that those who are 70½ or older do not have to take RMDs for 2020, including 2019 RMDs required to be paid by April 1, 2020.

In Conclusion

While the summaries above let you see if an individual provision might apply to you, the CARES Act has many conditions and complexities in it. As a member of the AICPA Employee Benefit Plan Audit Quality Center and with our professionals having attended multiple trainings related to the complexities of the CARES Act, we are uniquely qualified to help you navigate this complicated terrain. To determine how and if these changes affect you and your business, please contact your LaPorte advisor or your plan's third-party administrator.