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# THE CONSTRUCTION AND REAL ESTATE INDUSTRY ADVISOR

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## Multiemployer Pension Plans: Additional Disclosures Affecting Union Contractors



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A benefit is considered to be a multiemployer plan when more than one employer maintains it or where employees are subject to collective bargaining. Such multiemployer plans are often used to provide benefits to union employees. On September 1, 2010, the Financial Accounting Standard Board (FASB) issued proposed changes to the required footnote disclosures for employees who participate in multiemployer plans.

Currently, Generally Accepted Accounting Principles (GAAP) in the United States require that employers disclose the total amount of employers' contributions to the multiemployer plan(s) during each fiscal year.

With the proposed changes, GAAP would now require disclosure of additional information, such as the following:

- Names and total number of all multiemployer plans in which the employer is participating
- Accumulated benefit obligation (ABO) of the plan(s) as a whole
- Expected contributions for the following fiscal year
- Trends in future contributions which are known to the employer
- Estimated liability that would be required to pay if the employer withdrew from the plan(s) ("withdrawal liability")
- Quantitative information about employer's participation in the plan, such as:
  - The number of participants compared to the total participants in the plan
  - The number of its employees as a percentage of total plan participants
- A detailed description of significant risks and uncertainties that the employer is exposed to related to their participation in the plan(s)
- A description of the contractual arrangements between the

employer and the plan(s), including current arrangements, the agreed upon contribution rates, and any minimum funding arrangements

The proposed changes aim to increase disclosures and provide additional information about an employer's risks and commitments arising from its participation in the multiemployer plan(s). Assuming the proposed changes are enacted, non-governmental entities would be required to disclose the information for annual and fiscal periods ending on or after December 15, 2010.

The proposal also includes a one-year deferral for non-publicly traded companies until the fiscal year ending after December 15, 2011. For example, a non-public/private held construction company is not required to disclose the additional information until the fiscal year ending December 31, 2011.

Many union contractors are aware of the so-called "construction industry exceptions." Basically, union contractors are exempt from the withdrawal liability if they go out of business or cease performing construction work; however, if the contractor remains in the construction industry in the same geographical area (as a non-union contractor, for example), the withdrawal liability can be assessed. Despite this exception, FASB has included contractors in the proposed rules.



## Revised Indiana Sales Tax Bulletin: Determining if an Entity is Engaged in Public Transportation



By Tom Nowak, CPA  
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Effective July 1, 2010, the Indiana Department of Revenue (IDOR) issued revised Sales Tax Information Bulletin #12 outlining the requirements transportation companies must meet in order to qualify for sales tax exemption afforded to transportation companies.

*“At a minimum, trucking companies must meet every critical factor; however, a company’s failure to meet non-critical factors can also result in the exemption being denied.”*

Independent transportation companies providing services for unrelated third parties have had little trouble in satisfying the requirements for the industry-favorable sales tax exemption. However, captive transportation companies providing services to primarily related parties that have enjoyed the sales tax exemption have recently been under scrutiny by the IDOR. The IDOR has argued that captive transportation companies have not operated as a separate company and/or at arms-length terms which are required to meet the factors necessary to be sales tax exempt.

The information bulletin provides factors that fall into two categories: critical and non-critical. At a minimum, trucking companies must meet every critical factor; however, a company’s failure to meet non-critical factors can also result in the exemption being denied.

While most companies likely adhere to many of the factors

listed in the bulletin in their normal course of business, there may be a small number of both critical and non-critical factors some companies are not currently following. For example, one critical requirement is any transportation company that is organized as a single member LLC must file a schedule of intercompany eliminations with their federal tax return. This factor is imposing a requirement not even required by the Internal Revenue Service (IRS). However, while the IDOR may be imposing requirements that could be challenged if litigated, a business that fails to observe these guidelines runs the risk the IDOR will attempt to revoke their sales tax exemption during an audit.

Also, for trucking companies that share employees whereby the employee works for both the captive transportation company and the operating entity, the IDOR provides guidance on what documentation will be required in these instances.

The critical factors included in the bulletin are as follows:

- The transportation company must transport the persons or property of another.
- The transportation company must receive compensation for the services it provides.
- The transportation company must hold and pay for appropriate public transportation insurance.
- The transportation company must be fully and independently authorized by federal and/or state authorities to provide public transportation services.
- Shared employees must be properly accounted for and detailed records maintained.
- Contributions of vehicles to a transportation company from a parent company must be properly titled in the transportation company’s name.
- Transactions between the parent company and the trucking company must be evidenced by actual invoicing and payments for all transactions.
- The parent company and the transportation company must segregate and account for each entity’s purchases and expenses.
- The parent company and trucking company must file appropriate schedules with their federal tax return reflecting intercompany eliminations.

The non-critical factors included in the bulletin are as follows:

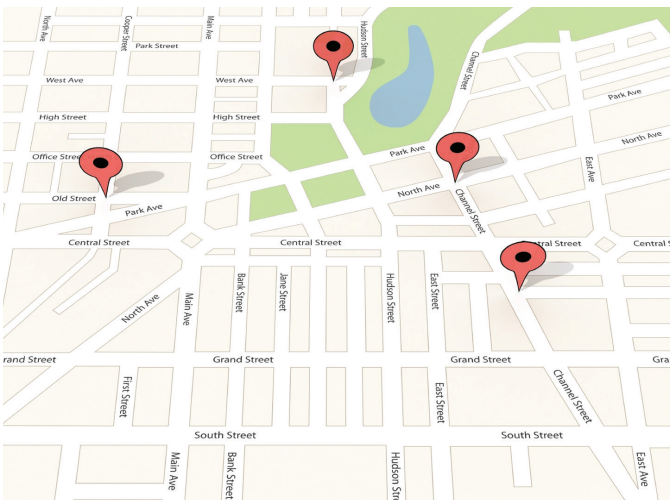
Continued on page 7. See “Sales Tax Bulletin.”

## Construction GPS



**By Charlie Brandt**  
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“The art is not in making money, but in keeping it.” In today’s economic climate, contractors are forced to re-evaluate their business models and compensate for the decline in demand for construction services. Managing assets and staying competitive in this “perfect storm” requires creative thinking and a shift in attitudes. Technology used in the right way can be the catalyst for a company’s success.



The ripple effect technology creates has been seen throughout many organizations, from auto manufacturers to the housing industry. Applying technology can be a large undertaking not only with the implementation of a new solution, but also due to the culture change and the challenges of using the technology.

As with any investment, it is important to be diligent in understanding what an organization wants to achieve now and in the future by selecting a solution provider that is capable and innovative enough to keep up with the changing needs of the business.

Technological advances within the construction industry

have given companies the means to use various reporting methods to collect specific data to provide valuable insight to the overall health of an organization. Through the use of advanced technology, the GPS tracking device – typically used for on-road activity – has been innovatively designed to accommodate the construction world. The adaptation of GPS technology to construction activity provides businesses a relatively quick return on investment by identifying areas to streamline and reduce unnecessary spending.

*“Not only can organizations realize a cost savings and higher productivity rates, they can also become more competitive.”*

Though GPS tracking is most commonly used for on-road situations and preventative maintenance (PM) reporting, it is now being implemented for off-road use as a work or asset management system within the construction industry. Through the use of cellular or satellite transmission, a GPS tracking device mounted on heavy equipment can monitor and report on a vast array of data that can be detailed to the specific needs of the organization.

By monitoring production/productivity issues in real time, such as location points, fuel consumption, idle time, run and roll time, businesses can achieve a better understanding of their overall asset management as well as higher productivity rates, increased efficiencies, real-time job costing and overall cost savings.

Not only can organizations realize a cost savings and higher productivity rates, they can also become more competitive in the market by analyzing the data to bid more accurately on potential projects. Data provided by the GPS system can also give companies a “leg up” on current environmental issues and help them become compliant with emissions regulations.

As previously mentioned, it is important to understand one’s business goals and the impact a program of this scale will have on a company’s culture before implementing it.

The right solution provider can provide the experience

Continued on page 7. See “GPS.”



## The Most Talked About Provisions of the New Health Care Legislation Affecting Businesses



**By Jolaine Hill, CPA**  
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*“Starting in 2011, your W-2 tax form sent by your employer will be increased to show the value of whatever health insurance you are given by the company. It does not matter if that is a private concern or governmental body of some sort. Your gross pay will go up by the amount of insurance you get. The dollar value (cost of what the company pays for your insurance) will be considered income and added to your gross pay. You will be taxed on the total. You will be required to pay taxes on a large sum of money that you have never seen.”*

– Quinnscommentary

The above misinterpretation, reported in various forms on the Internet, is the most misquoted and misunderstood provision of the 2010 Health Care Act. Health care benefits have not been made taxable to employees. The change in the law requires the employer to report the value of the health care benefits received by the employee as additional information only. The reporting will be similar to how an employer reports 401(k) deferrals, health savings plan contributions and other miscellaneous information that has no effect on the employee’s gross pay. This change in reporting requirements was to be effective starting with the 2011 W-2s; however, this provision has been deferred to 2012 W-2s.

The other frequently talked about provision in the Health Care Act relates to information return reporting. Currently, a taxpayer who makes payments of \$600 or more during the year to anyone, other than a corporation, is required to report those payments to the IRS on a Form 1099. Examples of payments that need to be reported include, but are not limited to, payments for services, interest, rent and pensions.

Beginning with payments made in 2012, two changes have been made to the information return reporting rules. The

first change eliminates the exemption that had been given to corporations. A taxpayer will be required to issue a Form 1099 to anyone, including corporations, to whom it is paid \$600 or more during the year.

The second change to the information reporting rules relates to what is required to be reported on a Form 1099. The new rules require that in addition to amounts which were previously required to be reported, amounts paid in consideration for property will need to be reported if the amount paid to any payee exceeds \$600 in the aggregate for the year.

The act refers to the term gross proceeds in referring to amounts that are required to be reported, but fails to define the term gross proceeds. An example of the new requirements would be if B Corporation would buy a used car from an individual for \$1,000. B Corporation would be required to issue the individual a Form 1099 related to the purchase of the car.

It is not known at this point whether the new rules related to Form 1099 information reporting will take effect. There are proposals in Congress to revise or repeal these new reporting requirements.

Since many of the provisions in the 2010 Health Care Act have not had any formal or informal guidance issued by the IRS, it is important to be careful of what is read and heard from outside sources. It is important to stay in contact with one’s tax advisor as to how law changes affect a business. •



## Using Assessments in the Hiring Process



**By Mark Barnhart, CPC, CERS**  
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As a business owner or manager, finding and hiring the right person for the job is critical. After years of honing interview skills and becoming comfortable with hiring the right candidates, employers still see people struggle once they are on the job or, worse yet, leave the company after so much time, money and energy have been invested into them.

Much of an interview is subjective. How often do people go with their “gut feeling” when interviewing potential employees? Now think about how often that “gut feeling” is wrong. With added pressures to only hire the best and brightest, more and more hiring managers are beginning to explore the use of profile assessments or personality profiles as part of their hiring process.

*“When used properly, along with interviews, references and background checks, profile assessments can become valuable tools for a company’s long-term success ...”*

When used properly, along with interviews, references and background checks, profile assessments can become valuable tools for a company’s long-term success and help reduce the likelihood of a costly mis-hire. The costs of hiring the wrong person can be far-reaching. The U.S. Department of Labor’s rule of thumb puts replacement cost as equating to 33 percent of the annual salary of the individual being replaced. Most executives tend to push that number much higher for top talent. In addition, the hidden costs of replacing a bad hire include the cost of recruiting a replacement, training

the replacement, lost productivity, and, in some cases, client retention.

Use of an assessment may not replace the traditional interview. No matter how much people love the new tool, nothing can replace a face-to-face interaction. The profile assessment should be used as a piece of the overall hiring process. It cannot provide a summary of a candidate’s past accomplishments or achievements, nor can it provide a reference on the candidate’s past work history.

The tool can, however, provide insight into a candidate’s personality, their behavioral traits, and how they compare to other top performers in the company. It can also provide insight into things like how the individual approaches a project; whether they are an introvert or an extrovert; and how well they participate in a team environment.

It is important to remember that the assessment can continue to be an effective tool for an organization even after the candidate has become an employee. Wouldn’t it be nice if all employees came with a user’s manual? That is essentially what the assessment is. For example, if it is known up front that a new hire requires direct feedback, an employer might want to make sure this person is given recognition for a job well done. If another new employee has a profile that shows he or she seeks out others and needs to be sociable, avoid putting them on a solo project with no interaction.

Studies have shown assessments can increase employee retention and improve productivity and morale because the one-time candidate eventually becomes an employee who is in the “right” job for them and is a productive employee for the organization.

Many assessments are offered in the marketplace. When choosing an assessment tool, keep in mind one very important word: validation. Make certain the tool chosen satisfies all requirements of the EEOC, the ADA, the DOL and the Civil Rights Act. It should also be validated to be age-blind, gender-blind and ethnicity-blind.

For more information on how to integrate profile assessments into hiring processes, contact Mark Barnhart at [mbarnhart@touchpointrecruiting.com](mailto:mbarnhart@touchpointrecruiting.com). •

## Pension Plans *(continued from page 2)*

The effective dates of this pronouncement leave limited time for contractors to obtain the necessary information and prepare for the new disclosure requirements. It is recommended that the contractors who participate in multiemployer plans should contact the appropriate parties which can provide information needed for the disclosures, particularly their share of the estimated unfunded pension liability.

Companies should also attempt to obtain the supporting calculations and actuarial assumptions to review, and recalculate their estimated share of this liability and ensure it is accurately calculated.

In accordance with FASB's rule-making procedures, it is seeking comments from construction companies. The comment period ends November 1, 2010. After review and deliberation, the FASB intended to issue footnote rules in the fourth quarter of 2010.\*

*\*In November 2010, the Financial Accounting Standards Board (FASB) decided to delay the proposed 2010 effective date for its project on disclosures about an employer's participation in a multiemployer plan (the "multiemployer plan proposal"). The FASB staff indicated that several significant issues have been raised in the numerous comment letters received to date, and that adequate due process is needed to address those issues. The Board did not decide on a new proposed effective date on this proposal, but did indicate that it plans to further evaluate this in early 2011. •*

## GPS *(continued from page 4)*

in helping an organization decide what reporting metrics are important and implement the correct solution for a business' needs. Being diligent in the selection process of a GPS program and following through with the technology's capabilities after implementation will ensure a quick return on investment and allow a company to stay competitive and lean in today's economy.

KSM Consulting is able to assist in identifying, evaluating, implementing and managing technology such as this, allowing companies to run a more efficient organization. For more information, please visit [www.ksmconsulting.com](http://www.ksmconsulting.com). •

## Sales Tax Bulletin *(continued from page 3)*

- The transportation company and the parent company must maintain separate books and records, including separate charts of accounts.
- Transactions between the parent company and the trucking company must evidence a commercially reasonable, arms-length relationship.
- The parent company and trucking company must maintain separate bank accounts.
- The parent company and trucking company must issue separate Form W-2s to their employees.
- The parent company and trucking company must maintain separate federal depreciation schedules pursuant to generally accepted accounting standards.
- Any income earned by the transportation company for transporting for a third party is to be recognized by the transportation company.
- If the parent company owns and holds titles to the vehicles, the parent company may lease those vehicles to the transportation company; however, the lease must be documented as a commercially reasonable, arms-length transaction. In addition, the lease must be evidenced by actual payments to the parent company. If the transportation company owns the vehicles, titles to the vehicles must be held by the transportation company.
- The parent company and trucking company must have separate employees, or if the transportation company leases it employees from the parent company, there must be a meaningful, arms-length charge for the leased employee.



The issuance of this bulletin clarifies the procedures and processes a transportation company is required to comply with to be considered engaged in public transportation and qualify for sales tax exemption. For additional information, contact any member of KSM's Construction Services Group at 317.580.2000. •



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### KSM Construction and Real Estate News



KSM's Construction Services Group hosted a seminar, "Navigating Your Construction Company Through a Turbulent Economy," led by Landon Funsten, principal of FMI Corporation and frequent speaker to numerous national and regional construction industry groups. At this event, Ron Lenz provided an Accounting and Tax Update for Contractors.

Ron Lenz joined Construction Management Advancement Association (CMAA), a professional organization dedicated exclusively to the interests of professional construction and program management. Ron also earned the prestigious Certified Construction Industry Financial Professional (CCIFP®) designation awarded by the Board of Trustees of the Institute of Certified Construction Industry Financial Professionals.

Milind Nagarsheth and Chris Felger attended the Trademark Association Professionals' event, "What's on TAP? Economic Forecast for 2011."

Ron Lenz attended the 19th Annual Construction Industry CPAs/Consultants Association (CICPAC) Conference in Chicago, Illinois.

For more information about Katz, Sapper & Miller, LLP, please visit [www.ksmcpa.com](http://www.ksmcpa.com).

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