STA

SUBCONTRACTOR NEWS

Subcontractors Trade Association, Inc.

Serving NY Metropolitan Region

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2004 CONSTRUCTION AWARDS

...also act now to reserve advertising in the journal and support the STA and its good work!

STA 2004 Legislative Program

The Subcontractors Trade Association (STA) has adopted a legislative program for the 2004 session of the New York State Legislature requiring that retainage on private projects be placed into an interest-bearing escrow account and reforming the strict liability provisions of Sections 240/241 of the Labor Law continue to top the priority list. STA's 2004 program consists of a variety of proposals intend to protect the rights of construction industry subcontractors and suppliers, as follows:

- **RETAINAGE HELD IN INTEREST-BEARING ESCROW ACCOUNT:** This legislation would require that retainage on public and private projects in NYS be deposited into an interest- bearing escrow account for the benefit of those from whom retainage has been held. Several other states already have such escrow account laws. This bill made it to the Senate floor during the 2003 session and will be pushed hard by STA early in the 2004 session.

- **REFORM OF 240/241 LABOR LAW:** This legislation would provide much needed relief to NYS contractors and subcontractors who must currently cope with an absolute liability standard (no defense) when sued for gravity related injuries. The current law has resulted in runaway litigation, which has had a huge cost and insurance impact on the construction industry since injured workers don't have to prove negligence.

Continued on page 2

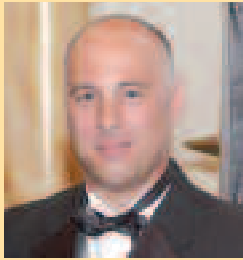
The Scaffold Law

Labor Law §240/241 has been subject to many changes, although the basic concept has remained essentially intact. The statute reads, in part, as follows:

> "All contractors and owners and their agents, except owners of one and two family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure, shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

—see page 3 for update

President's Message: A Call to Service


GREGORY FRICKE, JR.

A call to service...

APATHY SEEMS TO DEFINE the general rank and file of our industry.

A small group continues to do the heavy lifting that continues to yield lasting benefits to the industry at large.

This must change. We must overcome the hesitation to get involved. Are you too busy? The answer is yes, of course you are, but that is no excuse. Were all to busy... running our respective business, bidding jobs, collecting money, trying to get insurance, bonding etc. And then there are our personal lives and responsibilities....

Sure there are plenty of good excuses to not get involved in the process, but rather, I say these are gross rationalizations. Clearly we make time for what matters in our lives.

The economic survival of our companies and our industry must be one of those issues in our lives that matter.

It has been referred to by some as the perfect storm: a sustained void of work both public and private, continued payment problems, an exodus by the insurance companies and sureties making it all but impossible to get liability insurance at any price, and bonding requirements tightening immeasurable.

The issues remain clear, an example: some reform of the scaffolding law (local law 240, 241) is required. We need some negligence standard so that contractors are allowed to offer a defense. No one wants to eliminate any worker protections, but some sanity must be injected into this process. We must eliminate the ability of the trial lawyers and a relatively small percentage of workers to exploit this law for there own selfish profit.

We must reach out to those in the labor movement and carefully explain that this current insurance crisis is a direct result of the exploitation of this law. This law that is unique to New York State. The only solution is Legislative reform. Without insurance, no buildings will be built and workers will not work. It's just that simple.

This is a dialogue on one major issue that we are working on, but there are many more.

We have a targeted committee structure in place. Please review the following listing of committees and get involved in the process. You, your business and our industry will be better for it...

The STA has proven that it can make a difference, join the process and be apart of the solution, its time for you to make the time. ■

Committee Listings with their respective chairman:

Committee	Chairman
Business Practice Interchange (BPI) & Networking:	Robert Samela
Insurance & Bonding:	Robert Spadaccia
Dinner Dance & Journal:	Fred Levinson
Membership Committee:	Greg Fricke
Legislative:	Arthur Rubinstein
Public Agencies:	Larry Roman
Program & Education:	Monet Milad
School Construction Authority (SCA):	Fred Levinson
Architects & Engineers:	Ron Berger
Business Development:	Jerry Liss

STA 2004 Legislative Program

continued from page 3

STA will join other construction industry groups in seeking amendments to this onerous and costly law.

■ **Retainage Reduction:** This legislation would require a 50% reduction in retainage on all public works projects upon completion of 50% of the project. Retainage held on state and local public works projects can amount to a significant sum of money for many subcontractors. This bill would get a large portion of the money held by the public owner into the pockets of the subcontractors sooner than is currently the case.

■ **Payment Bonds:** This legislation would require a payment bond be posted on certain "hybrid" projects in New York State such as those where a private owner leases property from a public entity and then constructs a building on this property for the benefit of the private owner. Currently, subcontractors and suppliers have no lien rights on these hybrid projects. This bill would provide payment bond protection to subs and suppliers.

■ **Hold Harmless, 3rd Parties:** This legislation would close a long standing loophole in the General Obligations Law by prohibiting hold harmless clauses which require subcontractors to indemnify the general contractor or the general contractor to indemnify the owner, for damages caused by the negligence of 3rd parties.

■ **Delay Damages:** This legislation would impact on all public works projects in New York State by allowing contractors and subcontractors to recover delay damages where such delays is for an unreasonable period of time and is the fault or responsibility of the public owner

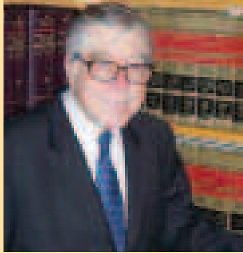
■ **Construction Employment Payroll Limitation Law:** This legislation was pass back on June 30, 1998 and is scheduled to be repealed on December 31, 2005. We are endorsing this bill to be extended for another six (6) years. What this bill does is limit your tradesman's' weekly salary to a maximum of $750/week subject to workers comp.

■ **Bid Listing/ Standard Subcontractor/Direct Pay:** This is a "back burner" legislation only intended to be pushed if it appears the Wicks Law is in jeopardy. It would require bid listing of subcontractors in excess of $25,000, a standard form subcontract, and direct payment to listed subcontractors by public owners. ■

LEGAL LOG

NEW YORK'S HIGHEST COURT RULES ON SCAFFOLD LAW

By Jay Kushner, Esq. — Goldberg & Connolly, STA Legal Counsel


JAY KUSHNER, ESQ.

New York State adopted the first "scaffold law" more than a century ago to remedy unsafe conditions which construction employees often faced while working at various heights at a construction project. The scaffold law [now Labor Law §240(1)] has been subject to many changes, although the basic concept has remained essentially intact. The statute reads, in part, as follows:

"All contractors and owners and their agents, except owners of one and two family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure, shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

The purpose of the scaffold law is to require owners and contractors to furnish construction workers with a safe place to work. More than 80 years ago, New York's highest court, the Court of Appeals, began to characterize the duty imposed by the scaffold law on owners and contractors as "absolute". The judicially fashioned term, "absolute (or strict) liability", later followed. Under this broad concept of liability, owners and contractors not actually involved in construction can be held liable regardless of whether they exercised supervision or control over the work.

Until now, the prevailing conception was that the scaffold law served to provide a remedy for virtually every elevation-related workplace injury. However, in a recent decision, Blake v. Neighborhood Housing Services of New York City, Inc., the Court of Appeals appeared to significantly recognize that there may be limitations to the reach of the scaffold law.

Background

In the Blake case, the owner of a small contracting company was injured as a result of a construction related accident in March, 1995. At that time, Blake had been hired to perform certain renovation work at a house in the Bronx. The renovation project was funded through Neighborhood Housing Services (NHS), a not-for-profit lender providing low interest financing to facilitate such renovation projects.

On the day of the accident, Blake was working alone, To work on a second-story window, Blake set up an extension ladder, which he owned and used frequently. As Blake himself acknowledged, the ladder was steady and securely placed, had rubber shoes, and was in proper working condition. When Blake began scraping rust from a second-story window, the upper portion of the ladder retracted, causing Blake to suffer a severe ankle injury. Later, at trial, Blake openly admitted that he was not sure if he had locked the extension clips in place before ascending the ladder.

Blake sued the homeowner and NHS (as statutory agent) alleging a violation of Labor Law §240(1). Blake contended that he was entitled to the scaffold law protection regardless of any negligence on his own part. Prior to trial, the homeowner was dismissed from the action by the trial court based on the two-family dwelling exception provided by §240(1). After trial, the trial court and then the state's intermediate appellate court both ruled that the reach of Labor Law §240 was not as encompassing as Blake claimed, thereby precluding Blake from recovering any damages from NHS under that statute. Blake appealed to New York's highest court, the Court of Appeals.

Decision

In the Court of Appeals, Blake argued that he was entitled to recover damages for his injuries because labor Law §240(1) provides for strict (or absolute) liability. The Court disagreed and unanimously upheld the decisions of the lower courts, effectively recognizing some limitation to the scaffold law.

If little else, absolute liability under the scaffold law does not apply if the injured worker was provided a safe workplace and the worker's own negligence and conduct were the sole cause of the injuries.

The Court viewed the issue before it in very simple terms: should liability be imposed under Labor Law §240(1) even when the ladder was so constructed and operated as to afford proper protection and plaintiff was actually the sole cause of his own injury? The Court extensively analyzed the legislative and judicial history of §240, particularly focusing on the absolute liability aspect of the law. The Court of Appeals panel of judges acknowledged that the "terms may have given rise to the mistaken belief that a fall from a scaffold or ladder, in and of itself, results in an award of damages to the injured party. The Court stated that was not the law, and we have never held or suggested otherwise".

The full impact of the Blake decision has brought on considerable debate. For many years, the scaffold law has generated extensive litigation often resulting in substantial monetary awards to injured parties. The concept of "strict liability" has certainly encouraged widespread litigation in the area of elevation-related workplace accidents.

At the very least, the Blake decision holds that the meaning of "strict" and "absolute" liability within the context of Labor Law §240 is not without limitation. If little else, absolute liability under the scaffold law does not apply if the injured worker was provided a safe workplace and the worker's own negligence and conduct were the sole cause of the injuries.

The Blake decision appears to provide a contractor/owner with some means to defend an action under the scaffold law. Another recognized defense, the "recalcitrant" worker doctrine may also provide a defense. Under this concept, a worker who refuses to use available safety devises shall not be afforded the protection of the scaffold law.

The real significance of the Blake case will be shown in future cases. Perhaps Blake will open doors for rational exceptions to what appears to be an unlimited imposition of liability. It remains to be seen. It is this writer's opinion that remedial legislative action is still required to relieve the unfair burden of "absolute" liability that has resulted from long standing judicial interpretation of New York's scaffold law. ■

The Officers, Board of Directors,

Staff and Members of the

Subcontractors Trade Association (STA)

deeply mourns the untimely passing of

Michael Mazzucca

a former President of our organization,

a great industry leader, a good friend and a

recipient of the organization's most distinguished award,

the "Subcontractor of The Year in 1991" and a special award

"For Industry Leadership & Achievement" in 2003.

We will sorely miss his leadership and support.

He will always be remembered as an ICON and

LEGEND of our Industry.

Michael Mazzucca, Former President of STA, Dies

Michael Mazzucca is the President of Regional Scaffolding & Hoisting Co. Inc. Last year Regional Scaffolding was ranked 19th overall in Specialty Contracting in the Tri State area.

In addition to his work at Regional Scaffolding, Mike gives generously of his time to the Industry as Past President of BTEA and STA and currently as Chairman of the BTEA Joint Industry Safety Committee, Chairman of the STA Insurance, and Payment Practices Committees. He is also a member of the Building Industry Advisory Council and a Director and Vice President of the Hoist Trade association of New York. Michael also serves as a Trustee of the New York City District Council of Carpenters Benefit Funds.

Mike volunteers his skills and time after the business day and industry commitments are finished. A registered member of the Boy Scouts of America for 32 years, he has received several National Awards for his dedication and service to youth in the Scouting program. These honors include the Silver Antelope, the Silver Beaver, the Whitney Young Award, and the George Meany AFL-CIO Award. The Boy Scouts Court of Honor presented Mike with National Heroism Award in 1990 for saving a life. He currently serves on the Executive Boards of three Scout Councils and is past president of the Hudson-Delaware Council, and currently Executive Vice President of the Bronx Council (GNYC).

Michael has always shown an interest and given leadership and his time too many worthwhile organizations. Cardinal O'Connor presented him with the Bronze Pelican Award in 1987 for his spiritual development of catholic youth. In addition, the United States Congress has recognized his leadership and service to the community with a Certificate of Appreciation. Mike was recognized as man of the year (1995) by the Catholic War Veterans of NYS. He was also recognized by Rockland County when he was awarded their Distinguished Citizen Award. ■

FYI: Gary Segal

Gary Segal is winner of the 2004 Subcontractor of the Year Award. Here is a profile of his accomplishment.

Gary Segal is the President of Five Star Electric Corp., one of New York's fastest growing, premier electrical contracting firms in the city today. Gary has taken Five Star to new heights since taking over the reins of the company in 1991.

After graduating from Syracuse University in 1981, Gary began his career working in the field for his family's business. While working his way up the ladder, he was learning the philosophies and traditions of his Dad, Bernie Segal.

Gary developed and improved upon his father's teachings, and expanded the Company by successfully diversifying into other market sectors, while still maintaining its special niche of building and renovating New York City schools.

Five Star Electric is currently working on some of New York's major Construction Projects such as the New 26 Story Federal Courthouse and General Post Office Renovation at Cadmen Plaza, the Revitalization of the Whitehall Ferry Terminal and the Mega-Water Pollution Control Plants at Newtown Creek and Hunts Point. Five Star also recently completed the three School Complex at Glen Oaks Campus, the New NYU Kimmel Center & NYU Law School, and the Fast-Track Restoration of the 1 and 9 Subway Tunnel at the World Trade Center Site. However, Five Star's pinnacle achievement has been successfully completing over 10 million square feet of new and renovated school space since the inception of the NYC School Construction Authority in 1990.

Gary holds the Master Electrician License for the Company, is a member of the Board of Directors for the Association of Electrical Contractors, and is the Secretary of our Subcontractors Trade Association. Gary has been honored by the UJA Electrical Division, is the Chairman, and past honoree, of the Queens Boy Scouts Camp Builders, and the LIFE Organization. Gary and his wife Fran of 17 years, support many youth organizations and charities, and are proud parents of their three daughters, Erica 16, Jamie 14, and Alexa 12. ■

Five Star Electric Construction current and recently completed projects:
Brooklyn Federal Courthouse
Cadmen Plaza General Post Office Renovation
Whitehall Ferry Terminal Revitalization
Newtown Creek and Hunts Point Mega-Water Pollution Control Plants
Glen Oaks Campus Three (3) School Complex
New NYU Kimmel & NYU Law School
Fast Track Restoration of the World Trade Center 1 and 9 Subway Tunnel

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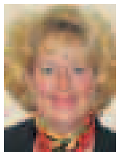
LABOR LAW HEADLINES

Karen J. Harding, Allied North America

Blake v. Neighborhood Housing Services NYC



ALLIED IS PLEASED TO report on newest appeals case effecting Owners and General Contractors Labor Law exposures. On Tuesday, December 23, the Court of Appeals rejected an expansion of Labor Law 240 in Blake v. Neighborhood Housing Services of New York City Inc Labor Law §§ 240 and 241 holds the owner and general contractor directly and completely responsible for an injury that results from a worker's fall if the proper safety equipment – such as a scaffold or harness – was not in place to prevent it.

In this case the plaintiff was found not entitled to collect as there was no violation of Section 240 and the plaintiff was found to be solely negligent. The Committee on the Development of the Law of the Defense Association of New York is responsible for submitting the amicus curiae briefs. The judge opinion stated, "the terms may have given rise to the mistaken belief that a fall from a scaffold or ladder, in and of itself, results in an award of damages to the injured party," JudgeRosenblatt said. "That is not the law, and we have never held or suggested otherwise."

The important point brought out in this case is that there has to be a violation of the statue and proximate cause order for the plaintiff to prevail. Another point brought out is that the contractor should not be penalized if they have complied with the law. Contractors should continue to press their legislators to revise the strict liability provisions of this statue. ■

FEDERAL COURT RULING

Holds "Pay When and If Paid" Clause Does Not Waive Miller Act Rights

ON MAY 22, 2002, the United States Court of Appeals for the Ninth Circuit handed down its determination in the United States for the Use and Benefit of Walton Technology, Inc.; Walton Technology, Inc. v. Weststar Engineering, Inc. and Reliance Insurance Company. In this case, the plantiff Walton Technology, Inc., was a subcontractor on a federal construction project who claimed that defendant Weststar Engineering, Inc. failed to pay rental fees for equipment, which was used on the project. As a defense to the claim. Weststar contended that a "pay when and if paid" clause in its agreement with Walton meant that no sums were justly due under the Miller Act until Weststar had received payment from the owner of the project. Reliance Insurance Company, as defendant's insurance company contended under the general rule of suretyship law, a surety's liability is co-extensive with that of its principal and that such co-extensive liability between a surety and its principal is in every case defined and limited by the principal's contractual liability.

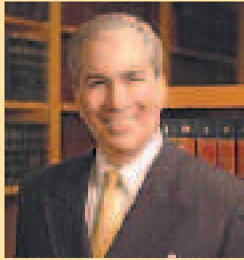
The Court in rejecting the surety company's contention held that the liability of a surety and its principal on a Miller Act payment bond is co-extensive with the contractual liability of the principal only to the extent that it is consistent with the rights and obligations created under the Miller Act. The Court then concluded that the surety could not assert the unsatisfied "pay when and if paid" clause contained in the agreement as a defense to liability on the Miller Act payment bond. The Court further stated "a subcontractor's right of recovery on a Miller Act payment bond accrues ninety days after the subcontractor has completed its work, not when and if" the prime contractor is paid by the government. Permitting a Miller Act surety to avoid liability on the payment bond based on a unsatisfied "pay when and if paid" clause in the subcontract would, for all practical purposes, prohibit a subcontractor from exercising its Miller Act rights until the prime contractor has been paid by the government. In cases where the government does not pay the prime contractor within the one year statute of limitations period, the subcontractor would be barred from asserting its Miller Acts rights".

The ruling in this case is particularly significant for federal projects in which have not declared, "pay when and if paid" contingent payment clauses invalid. New York State , the New York Court of Appeals in the Westfair case had invalidated contingent payment clauses. ■

Terence J. Burke
ESSA Legal Counsel

THE UNFAIR PRICING OF CHANGE ORDERS

By Henry L. Goldberg, Esq.


HENRY L. GOLDBERG, ESQ.

NYC Needs To Address Insurance Costs

THE PRICING OF CHANGE ORDERS is often a critical factor in the overall financial success of a project. The overall profitability of a job can easily turn on whether the owner is fair, equitable and accurate in this process.

It's time, therefore, for the industry to address what New York City agencies are doing in this regard. In particular, a review of the change order reimbursement "formula" in New York City's new Standard Construction Contract is long overdue. Under the apparent "catchall" rubric of "overhead," the City has included large, additional cost items – all at the same 10% overhead rate the City previously allowed. I often refer to this as the City's attempt to "shove ten pounds of manure into a five pound bag!" In all fairness, what needs to be done is for City agencies to use either a larger bag (i.e., greater than a 10% overhead allowance) or to shove fewer cost items into that same 10% overhead allowance.

Article 26 of the Standard City Contract entitled, "Methods of Payment for Extra Work," governs the pricing of change orders. It allows for the pricing of change orders through either (1) contractual unit prices, if any, (2) payment of the "actual and reasonable" cost of seven scheduled direct cost items (e.g., materials, direct labor, equipment related costs, sales and personal property taxes), plus a 10% markup for "overhead" items and a 10% profit factor, or (3) an agreed, negotiated fixed sum.

Many, if not most, change orders with New York City agencies are determined, at least in part, via the second - direct costs plus 10&10% method.

This would be simple enough, but for one conspicuous, recent omission from the direct costs category – all insurance charges for the insurance coverages required in the City's standard insurance coverage Schedule A.

This glaring inequity has gotten far too little attention. This is all the more problematic because (1) it is contrary to the City's own, long-term prior practice of correctly including all insurance charges as a direct cost item to be paid as incurred (rather than including them in the same 10% overhead limitation), and (2) it comes at a time of an historic crisis in both insurance coverage underwriting and insurance pricing.

As reported in the January 9, 2004 edition of the General Contractors Association's Newswire, quoting Jack Endryck, the Chairman of the New York State Construction Industry Council:

Construction industry members have reported to the Council that their insurance industry premiums are spiraling out of control... 'Some say their insurance costs have increased as much as 500 percent in a single year. Others report one-year increases of 300 percent. Some say they cannot buy insurance at any price.'

Schedule A insurance requirements invariably include, at a minimum, 100% performance and payment (surety) bonds, workers compensation coverage, commercial general liability insurance automobile liability insurance and builder's risk insurance. In addition, Schedule A can also require items such as Jones Act and U.S. Harbor Workers and Longshoreman's Compensation Act coverage, professional liability insurance, collision liability coverage, etc. To arbitrarily include all of these huge, additional insurance costs into the same 10% overhead factor is grossly unfair. In fact, as acknowledged privately by "undisclosed sources" within City government – it is "simply wrong," "a mistake," and "should be corrected."

Construction industry members have reported to the Council that their insurance industry premiums are spiraling out of control... Some say their insurance costs have increased as much as 500 percent in a single year.

The former "overhead" provision in Article 26 (i.e., pre-October 1, 2000) read:

Ten (10%) percent of the total of Items 1 - 7 (i.e., direct cost categories including one for all "insurance required by reason of the performance of the extra work") as compensation for all other items of cost or expense including administrative, overhead, superintendence, and small tools;

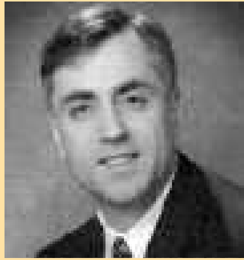
The new provision in Article 26 of the Standard City Construction Contract (10/1/00) states:

Ten (10%) percent of the total of items in Article 26.2.1 and 26.2.5 (i.e., the seven (7) direct cost categories, excluding all insurances required by Schedule A) as compensation for overhead except that no percentage for overhead will be allowed on payroll taxes or on the premium portion of overtime pay or on sales and personal property taxes. Overhead shall include without limitation, all cost and expenses in connection with administration, management, superintendence, small tools, insurance required by Schedule A of the General Conditions and Performance and Payment Bonds. (Emphasis added.)

Can there be any justification for "forcing" these huge additional insurance expenses into the same 10% overhead factor? Of course not. ■

MANAGEMENT CONTROLS: An Owners' Primer

By Eric Kreuter, CPA, CMA, CFM, CFE, DABFA, SPHR and Michele Fortunato, CPA


ERIC KREUTER

Control over assets, intellectual property, and files are essential in running a successful small business. Small firms, currently experiencing difficulties in management, may benefit from a review of these controls. This may serve to improve overall corporate management. Below are several comments and suggestions to consider in facilitating a more efficient management structure.

In any company, it is imperative to safeguard files and records. Failure to do so may result in loss of damage of records, reducing their accuracy. Therefore, to insure security of files, restrict access of ledgers, journals, and computer records to authorized personnel who have appropriate experience with the software and have password access. Employees can be set up to only have access to selected information. Passwords should be changed periodically and following staff turnover. It would be wise to change these passwords quarterly or semi-annually as a precautionary step. Be aware that several software packages have the capability to lock prior period information so that finalized balances cannot be changed.

Of high importance is the segregation of duties. This is a valuable, albeit sometimes impractical approach to implement. Try to establish a system where you examine and approve invoices before payment. This will allow you to become familiar with vendors and increase awareness of what the invoice is for, confirming that it is a company expense and not a personal employee expense. Often, frauds involve payments to a fictitious entity having a similar name to a known vendor. Another, way to segregate duties would be to require that one person not be able to both write and sign checks. The bookkeeper should prepare checks, but not sign them. The owner should sign all checks. In addition, checks over a certain dollar amount should require two authorized signatures, if applicable.

It is also important to be familiar with vendors and supplies, as well as your employee register so that inconsistencies can be recognized and dealt with expeditiously. Review of a daily cash report will allow you to track your cash flow. Prepare an annual budget and throughout the year compare budget amounts to actual amounts, in order to spot unusual fluctuations.

In addition, weekly accounts receivable and accounts payable reports should be carefully reviewed. Be certain that cash receipts and disbursements are being applied correctly and taken off these reports. Also, confirm that all ongoing jobs have been accounted for and amounts to be received or paid are correctly included in these reports. Then, take note of old balances and, if necessary, consider collection procedures.

With regard to payroll reports and registers, it is important to recognize all the names on the payroll register and spot check gross and net pay. If correctly recorded, the balances should be relatively consistent form period to period. For larger entities, there is identity recognition technology (bio-scanning) that will ensure proper payroll distribution.

It's a good idea for an owner executive level person to receive directly all unopened bank statements as well as all incoming mail. Then this person can review the statements, the canceled checks and the posted deposits. This routine task will allow you to see check payees, and amounts. It is also good to spot check, and inquire about any unusual vendors with whom you are unfamiliar. Remember that there should be few, if any, checks to cash and then note that the check sequence is consistent and dollar amounts are reasonable.

Always review your monthly bank reconciliations so that you understand all reconciling items. Reconciliation's should be available for your review by the fifth day after receipt of the bank statements. This will also enable you to verify that the bookkeeping was properly accomplished. If you can reconcile from book to bank and the reconciling items look reasonable, then it would appear that everything is in order. It is always wise to immediately question any unexplained reconciling items.

Scan the bank statements for transfers between accounts and make sure that total cash receipts and disbursements for the period are in line with what you were observing in your daily cash report. Finally, have each entity fund its own operating expenses to the extent possible. This will avoid confusion in your analysis of reports and inconsistencies between various related parties.

For companies with related entities it is important to pay special attention to inter-company transactions. Inter-company balances should be reconciled monthly and all advances and/or repayments should be accounted for. Furthermore, there should be additional effort taken to keep the books and records for each entity separate. Organization is a necessity. Checkbooks should never be mixed, and wire transfers between accounts need to be monitored. It is imperative to separate expenses and apply each to the proper entity. Keep blank checkbooks secure and control access. Blank checks in the hands of thieves can result in loss of business and disruption.

> **Prepare an annual budget and throughout the year compare budget amounts to actual amounts, in order to spot unusual fluctuations.**

One last thought you may wish to consider is employee dishonesty insurance, if available through your insurance carrier.

Implementing some, if not all, of these suggestions will hopefully result in better management, thereby insuring a more profitable and efficiently run company. If you would like more information on this topic, please contact us at our White Plains office. ■

MAJOR TAX RELIEF FOR CONTRACTORS

By Daniel A. Castellano, CPA - Castellano, Korenberg & Co., CPA's

DANIEL A. CASTELLANO

In May, 2003 President Bush signed into law new tax legislation which encourages business investments by contractors. The new law allows contractors who purchase qualifying assets, such as machinery, equipment, furniture, computers, etc. after May 5, 2003 to accelerate depreciation deductions for these assets and thus reduce current income taxes.

This is accomplished by the following:

1. Internal Revenue Code Section 179 ("Section 179") and
2. Bonus Depreciation

Under Section 179, a construction company can elect to immediately deduct the cost of new asset purchases up to $100,000 as long as total qualifying purchases does not exceed $400,000 in any tax year. For the majority of contractors, managing this threshold should not be an issue.

The new tax act increases bonus depreciation from 30% to 50% for qualifying assets placed in service between May 5, 2003 and December 31, 2004. Under the bonus depreciation rules, 50% of an asset's cost is automatically depreciated; the other 50% is then subject to the regular depreciation rules.

Contractors can utilize both Section 179 and Bonus Depreciation rules as illustrated by the following example:

Facts: A contractor purchases $300,000 of qualifying property after May 5, 2003 and before January 1, 2005.

1. Section 179 – The taxpayer claims $100,000 as an expensing deduction.
2. Bonus Depreciation – The balance of qualifying property is now $200,000, of which the contractor can take bonus depreciation of 50%, or $100,000.
3. Regular Depreciation – The remaining $100,000 will generally be depreciated over a 5 year useful life and therefore another $20,000 of regular depreciation will be allowed.

Summary

Section 179 expense deduction	$100,000
Bonus Depreciation	100,000
Regular Depreciation	20,000
Total **1st** year Depreciation	$220,000

This represents 73% of the total cost of the acquired assets, and these new assets should all revenue and profitability to the construction company.

As illustrated by this example, this new tax legislation will significantly lower the after tax cost of capital investments. The plan is that these incentives will promote capital spending and help stimulate the economy. Based on recent economic data, these incentives seem to be working.

But the news gets better for contractors since these rules are for income tax purposes only. Smart contractors will elect not to accelerate depreciation deductions for financial statement purposes and therefore will increase financial statement profitability and net worth. Furthermore, if the qualifying assets are financed, working capital will be enhanced and bonding capacity and banking lines of credit can be increased.

We would be glad to discuss these tax and financial statement strategies with you to minimize your taxes and increase your bonding and banking credit.

Press Release

Castellano, Korenberg & Co., CPA's, P.C.

FOR IMMEDIATE RELEASE:

Daniel A. Castellano, CPA, managing partner of Castellano, Korenberg & Co., CPA's, P.C. has been re-appointed as Co-Chairman of the NYSSCPA Bankers & CPA's Committee of Nassau.

Daniel A. Castellano, CPA, managing partner of Castellano, Korenberg & Co., CPA's, P.C. has been appointed to the Board of Directors of the Queens & Bronx Building Association.

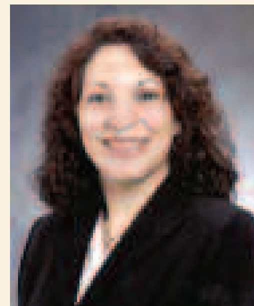
Daniel A. Castellano, CPA, has published the following articles: "Major Tax Relief for Contractors" and "How to Increase Your Bonding Capacity" in various construction trade publications.

Vincent J. Preto, CPA, tax partner of Castellano, Korenberg & Co., CPA's, P.C. has published and released the following article: "Employee Theft" and "Tax Penalties: How Much Can It Cost".

Carl Oliveri, CPA, of Castellano, Korenberg & Co., CPA's, P.C. has published and released the following article: "Help Us Help You Get Your Income Tax Refund".

NEW HIRES:

Alan Thornell of Hicksville, and Steven Woracek of Malverne have joined the professional staff of the accounting firm Castellano, Korenberg & Co., CPA's.



MARY AMATO, CPA joins Marden, Harrison & Kreuter, CPAs, P.C. (MHK), White Plains, NY, as MHK's Director of Tax Services. She comes to MHK from BDO Seidman, LLP where she was the Partner in Charge of the Westchester Tax Practice. Mary has worked extensively with owners and executives of closely held businesses in the construction, real estate, service and distribution industries. As a business advisor, Mary has helped her clients analyze and choose the best structures for business expansion and succession. She has identified many opportunities for tax savings and has successfully represented her clients before various taxing authorities. She spends her private time with family and enjoys a variety of outdoor activities.

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UPCOMING EVENTS

General Membership Dinner Meeting
March 24, 2004 — 5:30PM

Construction Industry Lobby Day Rally at Albany
March 30, 2004

Executive Committee Meeting
April 1, 2004

Board of Directors Meeting
April 13, 2004 — 3:00PM