

AGC's National Tax and Fiscal Affairs Committee January 2011 Meeting Recap

By: Tim Skelly, LarsonAllen LLP

Members of AGC's National Tax and Fiscal Affairs Committee met in early January to discuss how to influence the direction and outcome of significant tax and financial matters impacting the construction industry.

AGC, along with its members and other industry associations, is proud of its efforts in influencing the process and results of the Financial Accounting and Standards Board's (FASB) proposals. These proposals may have a costly impact on financial reporting by the construction industry. FASB continues to deliberate, and AGC continues to raise issues and provide recommendations on the following:

Financial accounting and reporting

Revenue recognition

FASB proposes major changes to the way contractors account for revenue recognition. Under the proposal, contractors would be required to adopt new financial reporting techniques that may be more subjective compared to the current method, SOP 81-1 percentage of completion. This could lead to inconsistent reporting.

Issues include:

- Confusion over what satisfies "performance obligations"
- A new focus on "control and separation" during the earnings process
- Possible split of the revenue recognition model between goods (transfer upon sale of product), and services (continuous transfer through performance of tasks or series of tasks).
- A new definition of construction contracts as a continuous delivery or process
- Proposals retain to the current accounting principle SOP 81-1 for measuring revenue during the progress of a contract
- Continue to pursue a "carve out provision" for revenue recognition with FASB for the construction industry
- FASB wants to understand how the proposal will impact contractors' income tax reporting

At this point FASB still plans to issue the new revenue recognition accounting standard in the second or third quarter of 2011, but admits significant issues on the proposal still exist. The AGC issued a formal comment letter to FASB detailing its concerns. These issues may be hard to resolve in this short time frame.

Accounting for lease transactions

Under FASB's proposed model, all operating leases would be classified as capital, which could redefine the underwriting processes and covenants in the banking and surety industry. This will have a significant impact on contractors' balance sheets, working capital, and leverage. AGC is focused on the following:

- Proposing differentiation between equipment leases and real estate leases
- How this impacts accounting for services such as cranes, scaffolding, and other sub-contractor arrangements
- The need to separately address short-term rental arrangements or leases with terms less than a year or an operating cycle
- Other ramifications:

- FAR–lease vs. rent (reimbursable expenses may be impacted)
- Sales tax–capital lease vs. rent classification creates sales tax consequences

FASB plans to issue new lease standards in 2011; significant issues need to be resolved.

Disclosure of employer’s participation in multi-employer plans

FASB’s proposal would require contractors to disclose information in financial statements about participation in pension plans, including the funding status and respective share of withdrawal liability.

- AGC There are significant legal interpretations related to withdrawal liabilities and issues that extend far beyond financial disclosure
- The construction industry is unique in its ability to address and avoid pension plan withdrawal liabilities
- Disclosure issues also include:
 - The timeliness, accuracy, and cost of obtaining this information
 - Disregard of financial reporting concept of companies

The multi-employer plan disclosure proposal has been tabled by FASB for “re-deliberation” and its future status is unknown.

Tax matters

Businesses and owners continue to be cautious with long-term tax planning and strategies due to the extension of Bush-era tax provisions for only two years—through 2012.

The AGC continues to recognize and support its top legislative priorities including:

- Permanent marginal, capital gains, and dividends tax rate reductions
- Permanent reduction of the estate tax on family owned businesses
- Total repeal of three percent withholding on government contract payments, now scheduled to be effective in 2012
- Support for bonus depreciation, capital equipment write-off levels, and shortened cost recovery periods, for certain retail, restaurant, and leasehold improvements
- Extending net operating loss carryback provisions for 2010 and 2011 operating losses
- Repeal burdensome 1099 reporting requirements for goods and services imposed by health care legislation
- Allow full deductibility of per diem allowances for contractors

Tim Skelly is a principal with LarsonAllen LLP in Minneapolis, specializing in construction and real estate. LarsonAllen provides assurance, accounting, tax, consulting, and advisory services to more than 1,500 contractors and 3,100 real estate entities nationally. For more information visit www.larsonallen.com or contact Tim at 612-376-4500 or tskelly@larsonallen.com.