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GOVERNMENT AFFAIRS UPDATE

Associated General Contractors of Ohio's Government Affairs Update provides information about government related matters of interest to the commercial building industry and AGC's advocacy efforts. It is e-mailed to AGC of Ohio members and available online at www.agcoho.com/advocacy.html. Direct questions and comments to Andrea Ashley, Vice President of Government Relations: andrea@agcoho.com or (614) 486-6446.

August 28, 2015

MUNICIPAL INCOME TAX LAW CHANGES: WHAT YOU NEED TO KNOW;

Webcast on Sept 28; [Learn more](#)

As teams begin to hit the field in preparation for the upcoming football season, we want to ensure you are also gearing up for the game-changing effective date of House Bill 5's municipal income tax laws. Municipalities are currently amending their existing income tax ordinances to incorporate the new law's provisions, and your business should be prepping now too in order to be ready by year end. Summarized below are just some of the benefits coming your way starting in 2016.

Pass-through entities: If your business is organized as a pass-through entity ("PTE"), the municipal net profits tax will now be imposed at the entity level (unless your municipality is one of a handful that previously voted to tax resident S corporation owners at the shareholder level), with the owner needing to file only in their city of residence. Also, gains and losses that are generated by resident taxpayers' different pass-through entities and their own net profit may offset each other during the year in which such gains and losses were generated to arrive at the total amount of tax due.

NOL carryforward: If your business does not have a profitable year, some relief is coming: starting in 2017 all municipalities must allow businesses to deduct any *new* net operating losses (NOL) and allow a five-year carryforward of those losses. Profits and losses are measured on a 12-month basis simply as an accounting tool used to facilitate the collection of tax revenues. However, businesses are established with the goal of making a profit over the long haul, not simply in any particular 12-month period. When you have a loss, an NOL carryforward is treated as an asset on your balance sheet to help offset future gains. Therefore, the NOL carryforward becomes an economic development tool by allowing businesses to deduct losses and continue to operate, helping you with job retention in down years.

Occasional entry rule: A significant improvement to the "casual entrant" exemption increases the number of days (from 12 to 20 per year) that individuals may work in a non-principal place of business municipality before incurring income tax liability there. Should your employee be there 21 or more days, you will need to withhold in that "other" city from day 21 forward until the end of the calendar year. The new law also defines a day to allocate tax liability to the city where an employee spent the majority of time working that day (you must withhold only to one municipality per calendar day), and provides that the casual entrant rule applies to all compensation. Businesses and cities may continue to work out other agreements as well if both parties agree.

Another major change eliminates the requirement for employers with gross receipts of less than \$500,000 a year to track where their employees are working; instead, these small businesses will simply withhold to the jurisdiction where the principle place of business is located. These businesses must still file net profits returns in every city where they do business, but will owe no tax if the amount due is \$10 or under.

Other common sense changes: If you've done work in a municipality in the past but no longer work there, many cities require you to continue filing tax returns anyway for up to three years. The new law allows you to certify to a municipal tax administrator that you are no longer a taxpayer there. Upon certifying, you are no longer required to file with that municipality during future taxable years, unless the tax administrator possesses conflicting information or you start working there again.

Taxpayer Bill of Rights: The new law includes the full version of the state's Taxpayer Bill of Rights at the local level, and requires municipalities to publish a summary of the taxpayers' bill of rights and responsibilities online, as well as publish its municipal tax ordinances and regulations. It also aligns municipal return filing dates with state filing dates, and makes consistent with federal, state and current municipal tax law the tax return due date for entities with a fiscal year-end other than a calendar year-end.

Residency changes: The new law prescribes an income tax employer withholding schedule for all municipalities on a monthly vs. quarterly basis depending on your recent withholding amounts. Finally, municipalities are allowed to treat an individual as a resident for income tax purposes only if the individual is domiciled there, and it adopts 25 generally recognized common law factors for determining an individual's domicile.

Municipal Income Tax Webcast

To take a deeper dive into the new law and help you plan NOW for changes that will impact you, your business or your clients, please join us as former Ohio Tax Commissioner Tom Zaino, CPA, JD, Zaino Hall & Farrin LLC, hosts a [webcast](#) on September 28, 2015. AGC of Ohio, an active partner in the Ohio Municipal Tax Reform Coalition who pushed for the tax changes, is a co-sponsor for the program.

AGC TO HOST SECOND CONFINED SPACE PROGRAM

The next AGC of Ohio Safety Meeting, scheduled for September 25, will feature a presentation about implementing OSHA's new [Confined Spaces in Construction](#) standard. A group of safety professionals from different parts of the state have been working collaboratively to create documents and best practices that companies can use as a model. They will share their information, and participants will be encouraged to share their own efforts to comply.

The Safety Meeting will be held from 9:30 a.m. to 1:00 p.m. at the AGC office in Columbus. Additional agenda items include OSHA regulatory and enforcement update and a roundtable discussion about safety matters of interest. To attend, RSVP to Andrea Ashley at andrea@agcoho.com or (614) 486-6446.

Confined Space Resources:

- AGC of Ohio held an online meeting about the new standard on July 28. E-mail Andrea Ashley at andrea@agcoho.com for a copy of the presentation.
- AGC of America hosted two webinars on the confined space standard featuring Jessica Douma, Regulatory Analyst, Directorate of Construction, OSHA – who was directly involved in the creation of the standard. View the PowerPoint from the webinars: Confined Space in Construction - [What's Different](#) and [The Big Picture](#).
- Compliance assistance materials and additional information is available on OSHA's [Confined Spaces in Construction](#) Web page.

OFCC WEBINAR SERIES

Healthy School Site Planning: Increasing Community Connectivity and Physical Activity

On September 9, OFCC will host a webinar titled *Healthy School Site Planning: Increasing Community Connectivity and Physical Activity*. The program will identify how developers, planners, school administrators, construction managers and others can incorporate healthy school siting principles into their planning process. Attendees will obtain tools to plan for school buildings that heighten community use and value, support safe active transportation, as well as identify further resources for best practice site planning. The webinar is scheduled from 10:00-11:00 a.m. Register [here](#).

CALLING ALL INNOVATIVE EMPLOYERS!

Competition showcases solutions that reduce risk of workplace injuries

The Ohio Bureau of Workers' Compensation (BWC) is seeking employers who developed or implemented an innovative solution to an occupational safety or health issue for the next Safety Innovations Competition. Private, public and self-insuring employers in Ohio are invited to apply for the competition, which showcases successful innovations and helps other Ohio employers in their safety efforts and inspires more innovative solutions.

Innovations can come in many forms, whether it's a change in equipment, machinery, processes or procedures. Employers should be prepared to share how their innovations reduced safety, ergonomic and occupational health risks for their employees. To be eligible, employers must have an Ohio BWC policy number and be current on all monies owed to BWC. The innovations must have been placed into service between July 1, 2010, and June 30, 2014, and be currently in use.

The first round of judging starts in October. Finalists will compete for cash awards during the Ohio Safety Congress & Expo 2016, which will be held March 9 to 11, 2016, at the Greater Columbus Convention Center. Cash prizes range from \$1,000 to \$6,000. The deadline to apply for the Safety Innovations Competition is Sept. 30. For more information and to apply, visit bwc.ohio.gov.



ON THE ON THE NATIONAL FRONT... *Information courtesy of AGC of America*

CONTROVERSIAL WATERS OF THE U.S. RULE TAKES EFFECT TODAY FOR OHIO AND 36 OTHER STATES

The new Clean Water Act (CWA) definition of Waters of the U.S. (WOTUS) takes effect today, August 28, for 37 states, including Ohio. The controversial WOTUS rule by EPA and the U.S. Army Corps of Engineers (Corps) was publicly released May 27 and then published in the [Federal Register](#) on June 29. [Click here](#) to see AGC's overview of what are – *and are not* – WOTUS.

The Waters of the U.S. (WOTUS) rule has been challenged in multiple courts across the country. A U.S. District Court Judge issued a ruling in relation to one of these lawsuits, which was brought by more than a dozen states led by North Dakota. The judge said that the challenging states are "likely to succeed" in their lawsuit because U.S. EPA appeared to exceed authority granted by the Clean Water Act in determining its jurisdiction, and issued a preliminary injunction halting the rule from implementation.

However, the injunction only affects the states involved in this particular case. In those 13 states -- Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming – implementation of the new Waters of the U.S. rule is on hold. For all other states, the rule goes into effect August 28. EPA is still evaluating its further legal options.

To be clear, the term “Waters of the U.S.” or WOTUS dictates exactly what wet areas fall under federal jurisdiction and triggers federal water quality limits, standards, permits, enforcement and other reviews. Most notably, CWA Section 404 prohibits construction work (i.e., any discharge of dredged or fill material) in WOTUS without an Army Corps’ Section 404 permit. Generally speaking, if you already have received a Section 404 permit for your project, you will not have to obtain a new one, and your permit is grandfathered from the new definition of WOTUS. Any permit application deemed complete before June 29, 2015, is also exempt from the new WOTUS definition.

Contractors that fail to obtain a permit and discharge dredged or fill material into a WOTUS would be in violation of the CWA and subject to fines of \$37,500 per day from the time the discharge occurred.

Read a thorough AGC analysis of the rule [here](#). For more additional information, view the EPA’s [Fact Sheets](#) or visit www.epa.gov/cleanwaterrule or www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx.

IMPORTANT LEAD PAINT PROGRAM UPDATES FOR RENOVATION, REPAIR AND PAINTING CONTRACTORS

It is time to start thinking about renewing your U.S. Environmental Protection Agency (EPA) Lead Renovation, Repair and Painting (LRRP) program certifications, [as previously reported by AGC](#). All construction firms and their employees are subject to the LRRP rule, if they perform regulated renovation activities, such as work that disturbs lead-based paint in homes, child-care facilities or schools, with kids six years or younger, built before 1978.

For important updates for RRP contractors working in EPA administered jurisdictions, [click here](#). This includes Ohio and all but 14 states that operate their own LRRP program. (The authorized states are [AL](#), [DE](#), [GA](#), [IA](#), [KS](#), [MA](#), [MS](#), [NC](#), [OK](#), [OR](#), [RI](#), [UT](#), [WA](#) and [WI](#).) Remember that renovation firm and renovator certifications both expire every five years. Under the Toxic Substances Control Act (TSCA), EPA may file an enforcement action against violators of the LRRP rule seeking penalties of up to \$37,500 per violation, per day.

U.S. EPA representatives will have a booth at [AGC’s 2015 Contractors Environmental Conference](#) – scheduled for Sept. 2-3 in Arlington, Va. – where AGC construction firms can complete their LRRP recertification process online (and right at the conference site). Note: EPA is concerned that some renovation firms have trained employees but the firm itself is not certified. All businesses providing regulated renovation activities must be certified (even sole proprietorships). Firm certification involves the submission of an application and fee to EPA.

FIND OUT IF YOUR SOLVENT-CONTAMINATED WIPES QUALIFY FOR A WASTE EXCLUSION

Does your company use towels, rags or absorbents to clean machinery, parts or spills? If yes, then you will want to know about a U.S. Environmental Protection Agency (EPA) rule that may exclude your “[solvent-contaminated wipes](#)” from the hazardous waste regulations. The federal rule took effect in January 2014 in states where EPA still runs the Resource Conservation and Recovery Act (RCRA) program. Ohio is not part of the RCRA program, however [the Ohio EPA is in the process of adopting the policy](#), as is [many other states](#).

It took more than a decade for the U.S. EPA to revise its regulations under RCRA, the federal statute governing the disposal of solid and hazardous waste, and *conditionally* exclude solvent-contaminated wipes from certain federal hazardous waste management requirements, provided that businesses clean or dispose of them properly. Practically speaking, this means that your company may not need to send these wipes to special disposal facilities or comply with shipping manifest rules – which should translate to cost savings. See the [complete article](#) from AGC of America to learn more about the rule and its potential impact. View a copy of the [complete federal rule](#). For more information, visit the U.S. EPA’s [website](#) or the Ohio EPA’s [website](#).

FREE EPA WEBINARS

The [U.S. EPA Office of Superfund Remediation and Technology Innovation](#) is sponsoring complimentary webinars. The next webinar – Groundwater Statistics for Environmental Project Managers – is scheduled for September 3 from 1:00-3:15 p.m. Learn more, register or view archived programs at the Hazardous Waste Clean-up Information (CLU-IN) website at <https://clu-in.org/live/>.

UPCOMING AGC WEBINARS

HIRING AND RETAINING THE RIGHT PEOPLE (*Complimentary Webinar*)

Sept. 15, 2015, 2:00 - 3:00 p.m., [Info & Register](#)

The goal of most organizations is to have a robust workforce that supports the right people in the right positions and a set of systems and culture that keeps them excited to be there. However, the current reality for the construction industry is that there is not only an insufficient quantity of craft workers, supervisors, managers and staff for available positions, but also that the industry may not be appealing enough to attract and retain the younger Millennials or the upcoming Generation Z. Webinar attendees will:

- Explore what recruiting strategies and assessments may improve your chances of initially getting the right people to your front door
- Understand what primary elements to watch for during the recruiting process to hire quality employees
- Identify the leadership styles that motivate people and create a productive environment
- Discover the common mistakes that companies may make when addressing poor employee retention

Speaker: Randy Nemchin, Senior Consultant, FMI Corporation

DIFFERING SITE CONDITIONS: Who Pays for Undisclosed & Unforeseen Risk Webinar

Sept. 17, 2015, 2:00 - 3:30 p.m., [Info & Register](#)

Differing Site Condition claims can be the most expensive and schedule disruptive issues on a construction project. When you are, be it Constructor or Owner, taking on too much risk for Differing Site Conditions? How are you and your competition pricing that risk?

Learn practical pointers on how to manage this risk in contract negotiations, contract administration, and project management. Understand notice requirements, stop work rights, and work continuation obligations when encountering Differing Site Conditions. You will hear real life scenarios of projects where Constructors and Owners protected their compensation, payment obligations, and schedule rights, and where they got tripped up in notice, disclosure, site investigation, or the contract documents. Attendees will gain practical pointers to:

- Identify scenarios giving rise to Differing Site Condition claims
- Understand the history of Differing Site Conditions
- Learn how recent cases and contracting trends have recently changed this risk
- Provide contractual best practices and identify unfair practices used to address Differing Site Conditions in the bid and contract process
- Understand actions that a Constructor should take when encountering a Differing Site Condition
- Identify how contracts can transfer the risk from a Constructor to an Owner and vice-versa

Speakers: Marilyn Klinger, Partner, Sedwick LLP; Jeff Cruz, General Counsel, E.E. Cruz & Co., Inc.; and Brian Perlberg, Executive Director ConsensusDocs & AGC Sr. Counsel