

# ExecutiveMemo

www.ima-net.org



A newsletter of the Illinois Manufacturers' Association

June 24, 2009

## BRIEFLY

### Certification and government contracting — FREE Webinars

The Illinois PTAC at the Women's Business Development Center and the SBA invite small business owners and entrepreneurs to attend a series of free webinars. These webinar sessions will provide information about government contracts and certification for women owned businesses. Two topics will be covered in separate webinars.

"Are You Ready for a Government Contract" will be held on Thursday, July 16th; and "Is Certification Right for You?" will be held on Tuesday, June 16th and Thursday, August 13th.

All webinars begin at 1:00 p.m. and last for 90 minutes. The webinars will use ReadyTalk, SBA's multimedia training tool. ReadyTalk is very easy to use.

To register, please send an email to: [laura.cawley@sba.gov](mailto:laura.cawley@sba.gov) with WEBINAR RESERVATION and the SESSION DATE you wish to attend, in the subject line. Include your name, phone number, and company name. You will receive an email confirmation two days prior to the event. It will also include the toll free conference dial in number and the participant access code for both the phone and web portions of the seminar.

### Office of the City Treasurer — City of Chicago — Small Business Expo

The Treasurer of the City of Chicago is hosting the eighth anniversary of the Small Business Expo. The 2009 Expo features over 150 exhibitors and 16 unique and exciting workshops. The Small Business Expo will be held on Friday, July 17 from 8:00 a.m.–3:30 p.m. at the UIC Forum located at 725 West Roosevelt Road (Roosevelt & Halsted). For sponsorship, exhibitor, or attendee information, go to [www.chicagocitytreasurer.com](http://www.chicagocitytreasurer.com).

**Executive Memo** is published semi-monthly for IMA members by the Illinois Manufacturers' Association, 1211 W. 22nd St., Ste. 620, Oak Brook, IL 60523, 630-368-5300. Editor: Stefany Henson ([shenson@ima-net.org](mailto:shenson@ima-net.org)).

Reproduction of all or any part is prohibited except by permission of authorized IMA personnel.

## R&D Tax Credit McFerrin Case — Fifth Circuit ruling is good news for taxpayers

*Appellate Court overturns District Court in U.S. v. McFerrin*

On June 9, 2009, the 5th Circuit Court of Appeals vacated the Texas Southern District Court's ruling in *U.S. v. McFerrin*. The McFerrins had co-founded KMCO, Inc., a corporation located in Texas that manufactures commodity and specialty chemicals. They engaged alliantgroup to determine whether KMCO's expenditures for research and development (R&D) were eligible for the R&D Tax Credit. alliantgroup conducted the study and established that KMCO had conducted activities that qualified for an R&D Tax Credit.

The Government challenged the McFerrin's credit, and after a six-day trial, the District Court ruled in favor of the Government on the grounds that the taxpayer had failed to meet the threshold of innovation required by the "discovery test," had failed to demonstrate that the taxpayer had conducted a process of experimentation and had failed to substantiate its research credit.

In remanding on June 9, 2009, the 5th Circuit found that the District Court erred by inappropriately applying the outdated "Discovery Test." The 5th Circuit also found that the District Court, because it applied the wrong legal standard, failed to consider all relevant evidence to determine the McFerrin/KMCO's eligibility for the R&D Credit.

Finally, the Appellate Court made it absolutely clear that the "Cohan Doctrine" (if a qualified expense occurred, the court should estimate the allowable tax credit) is

applicable to the R&D Credit and made clear that the court should "look to testimony and other evidence, including the institutional knowledge of employees, in determining a fair estimate" [citing *Fudim*].

In response to the decision, alliantgroup's CEO, Dhaval Jadav, made the following statement:

"In a grey economy, the court's decision today in McFerrin is a big ray of sunshine. Companies engaged in research and development should be greatly heartened by the court's decision, which will make it significantly easier for companies to benefit from the R&D tax credit."

In response to the decision, alliantgroup's National Managing Director, Dean Zerbe (formerly Senior Counsel and Tax Counsel to the Senate Finance Committee 2001-2008 before joining alliantgroup) made the following statement:

"It is especially important that the court made it loud and clear to the IRS that the taxpayer has a right to rely on oral testimony and other evidence to support a claim for the R&D Credit. Equally important is that the decision directed that courts, where appropriate, should look to making estimates when determining the amount of the credit. The court's decision allowing estimates, oral testimony, and other evidence to support the claim for the R&D Credit will be particularly welcome to struggling small and medium businesses.

See **R&D TAX CREDIT**, page 2

Save the date . . .

**IMA's Young Leaders Council Fall Conference**  
October 2-4, 2009 • Eagle Ridge Resort • Galena

**IMA'S EXECUTIVE MEMO IS UNDERWRITTEN BY:**

plante  
moran

MORE THAN 850 BENEFIT PLANS AUDITED.

Plans audited range from \$100,000 to \$22 billion in assets.

Jeremy Fingeret of Fingeret, Frank and Jadav, lead counsel for the McFerrins, stated:

"As attorneys who represent hundreds of taxpayers claiming R&D tax credits, we are elated the 5th Circuit overturned this opinion. Not only did the Court strike down the Discovery Rule, but the 5th Circuit ordered the District Court to evaluate all evidence (including testimony) and make reasonable estimates for taxpayers claiming this valuable credit. It's a well written opinion applicable for taxpayers big and small."

Author Rick Meyer, CPA, MBA, MST, Illinois Director for *alliantgroup*, is a member of the ICPAS Business Tax Committee. He can be contacted at [rick.meyer@alliantgroup.com](mailto:rick.meyer@alliantgroup.com).

## The Conference Board Leading Economic Index™ for the U.S. Improves Again

The Conference Board Leading Economic Index™ (LEI) for the U.S. increased 1.2 percent in May, following a 1.1 percent increase in April, and a 0.3 percent decline in March.

Says Ken Goldstein, Economist at The Conference Board: "The leading economic index increased for the second consecutive month. The coincident economic index is still declining, but the declines are less intense. The recession is losing steam. Confidence is rebuilding and financial market volatility is abating. Even the housing market appears to be stabilizing. If these trends continue, expect a slow recovery beginning before the end of the year. However, employment will take longer to turn around." The Conference Board Coincident Economic Index™ (CEI) for the U.S. declined 0.2 percent in May, following a 0.3 percent decline in April, and a 0.7 percent drop in March.

## Gross Domestic Product, 1st quarter 2009 (preliminary)

Real gross domestic product — the output of goods and services produced by labor and property located in the United States — decreased at an annual rate of 5.7 percent in the first quarter of 2009, (that is, from the fourth quarter to the first quarter), according to preliminary esti-

mates released by the Bureau of Economic Analysis. In the fourth quarter, real GDP decreased 6.3 percent.

The GDP estimates released today are based on more complete source data than were available for the advance estimates issued last month. In the advance estimates, the decrease in real GDP was 6.1 percent.

The decrease in real GDP in the first quarter primarily reflected negative contributions from exports, equipment and software, private inventory investment, non-residential structures, and residential fixed investment that were partly offset by a positive contribution from personal consumption expenditures (PCE). Imports, which are a subtraction in the calculation of GDP, decreased.

The smaller decrease in real GDP in the first quarter than in the fourth reflected a larger decrease in imports, an upturn in PCE for durable goods, and a smaller decrease in PCE for nondurable goods that were partly offset by larger decreases in private inventory investment and in non-residential structures and a downturn in federal government spending.

Motor vehicle output subtracted 1.36 percentage points from the first-quarter change in real GDP after subtracting 2.01 percentage points from the fourth-quarter change. Final sales of computers added 0.06 percentage point to the first-quarter change in real GDP after subtracting 0.02 percentage point from the fourth-quarter change.

## RSM McGladrey Survey: Manufacturers' optimistic about economic recovery

*Companies are focusing on revenue growth to survive recession; those with international manufacturing activity fare better than domestic-only manufacturers*

RSM McGladrey has released the results of its fourth annual Manufacturing and Wholesale Distribution (MWD) National Survey. Respondents to the survey say they expect their companies to rebound from the current recession beginning in late 2009 and early 2010. In general, companies predict an earlier rebound for their own businesses than for their industry or the U.S. economy.

The 2009 RSM McGladrey survey results did, however, indicate a significant year-over-year decline in the reported health of companies. Forty percent of companies reported their business as "declining" this year, as compared to 12 percent in 2008. Some industries appear to be faring better than others. Medical

Devices and Food and Beverage executives, for example, reported favorable growth prospects and stronger-than-average business conditions, following a trend seen in previous years.

More than 920 manufacturing and wholesale distribution executives completed the survey, answering questions on topics such as current business conditions, growth strategies, operations, technology costs and risk management.

"Executives are reporting tough business conditions and as a result they have taken direct actions to reduce costs," said Tom Murphy, RSM McGladrey's executive vice president of manufacturing and wholesale distribution. "The survey also found companies are responding to the current economic conditions by implementing lean principles and streamlining operations. This should make businesses stronger and more competitive as we climb out of the recession."

Tom Murphy, executive vice president of manufacturing at RSM McGladrey and chief author of the survey report, discusses the findings at this YouTube link: <http://www.youtube.com/watch?v=tNmX4grPsTo>

The 2009 RSM McGladrey MWD survey finds that a significant number of companies are planning capacity modifications this year. Twenty-six percent plan to reduce capacity and 25 percent plan to consolidate operations, while only 15 percent plan to expand capacity.

As companies try to strengthen their balance sheets and offset the impact of tighter credit requirements, they are relying less on bank financing and more on cash flow as a primary means to fund capital expenditures.

Companies with global business activities are likely to fare better this year than companies focused only on domestic sales, according to survey results. Of the companies reporting sales declines for the year, only 37 percent expect declines for international markets, compared with 62 percent predicting sales declines for domestic markets. Correspondingly, sales increases are projected to be higher in international markets than domestic markets.

"The significant difference between anticipated domestic and international sales underscores the importance of pursuing international market opportunities. Survey analysis indicates that companies with global strategies benefit through improved margins," says Murphy.

"Companies can't cost cut their way to growth," Murphy noted. "With the recession

See **RECOVERY**, page 3

sion slowing demand for products, companies recognize the need for topline revenue growth. This is reflected in their focus on revenue-generating growth strategies."

The top four 2009 growth strategies cited in the survey were to acquire new customers, increase sales in domestic markets, increase sales to current customers and increase brand recognition.

Additionally, 95 percent of companies surveyed have plans to innovate products or processes, with new product development and product line extensions reported most frequently. Green initiatives are also a growing priority. More than half of the respondents have implemented or will implement green initiatives in 2009, with most (62 percent) reporting concern for the environment as the driving force behind such initiatives.

"Companies that innovate generate new revenue, improve differentiation from competitors and drive down costs. They also enhance their customers' experience through better products, decreased lead times and lower costs," says Murphy.

Survey results suggest executives feel they are at low risk of supply chain disruptions. This runs contrary to risk management theory, where the more complex a business process becomes, the higher the risks. With current inventories at low levels, companies need to ensure supplier disruptions are minimized.

Workforce reductions have been widely reported, as companies cut costs to stay competitive in the current market conditions — a trend reflected in the 2009 RSM McGladrey MWD survey results. Approximately twice as many survey respondents (52 percent) plan reductions in their U.S. workforces in 2009 as did in 2008. However, the outlook for 2010 appears brighter, with only 11 percent of respondents projecting cuts in their U.S. workforces and 44 percent planning to add employees.

Despite the recession and reductions planned, survey respondents continue to struggle to find workers with the skills required by today's advanced manufacturing environment. Engineers, manufacturing technicians, supervisors and entry-level workers are needed by around 30 percent of companies surveyed. Sales persons are in high demand, according to survey results, reflecting the revenue-generating growth strategies reported by company executives.

"The demand for skilled workers in the face of current levels of unemployment underscores the lack of technological skills in the current workforce. Companies need to partner with the educational community, government, industry associations and

organizations to identify the necessary skill requirements and develop training programs to fill this gap," says Murphy.

RSM McGladrey's 2009 MWD survey results yielded key opportunities for manufacturing and wholesale distribution companies.

- Tax Planning — Tax planning is a critical tool for companies seeking to manage cash flow. Although the tax planning strategies identified in the survey are available to companies of all sizes, less than half report taking advantage of allowable tax breaks.
- Information Technology — Ninety percent of companies consider information technology (IT) a critical component of business operations, yet 50 percent of companies are deferring costs to upgrade or enhance systems due to business conditions. This type of short term action may prevent companies from realizing the benefits IT systems can offer.
- Risk Management — Despite the critical role that risk management should play for companies in this economic environment — only 56 percent indicate they have a risk management function in place. In addition, enterprise-wide disaster recovery plans are in place at just 35 percent of the companies.

RSM McGladrey's 2009 Manufacturing and Wholesale Distribution National Survey was conducted from March 11 to April 13, 2009. The survey analysis includes the results of more than 920 executives and managers of U.S.-based manufacturing and wholesale distribution enterprises. The online survey was designed to assess the current state of the industry and to ascertain what steps CEOs, CFOs and other executives are taking to grow their business and stay competitive.

More information on the RSM McGladrey 2009 Manufacturing and Wholesale Distribution National Survey Report is available at [www.rsmmcgladrey.com/Manufacturing-Wholesale-Distribution/Welcome-to-RSM-McGladreys-2009-Manufacturing-and-Wholesale-Distribution-Survey?itemid=166&mid=166](http://www.rsmmcgladrey.com/Manufacturing-Wholesale-Distribution/Welcome-to-RSM-McGladreys-2009-Manufacturing-and-Wholesale-Distribution-Survey?itemid=166&mid=166).

## Controlling energy costs and usage online

The dawn of the Internet, product options and vendor outlets have expanded exponentially, giving consumers a vast array of choices and enabling them to take more control over how purchases are made.

This, in turn, has forced suppliers to continuously innovate and provide enhanced

See **ENERGY COSTS**, page 4

## DATES OF NOTE

More information/events may be found at <http://www.ima-net.org/calendar.cfm> and <http://www.ima-net.org/MIT/open.cfm>  
Email: [jstanley@ima-net.org](mailto:jstanley@ima-net.org)

July 16, 2009

**IMA-MIT Event: Consultative Selling Skills for Sales Professional — DePaul University O'Hare Campus, 3166 S. River Rd., Des Plaines**

Be ready to turn your "lean and mean" sales team into 'customer friendly' advisors your clients will trust to help them make complex buying decisions. Participants will be able to determine how their company's product can provide meaningful value to a client, even in a competitive or saturated market.

July 30, 2009

**IMA-MIT Event: Strategic Planning and Goal Setting — DePaul University O'Hare Campus, 3166 S River Rd, Des Plaines**

This Workshop aims to assist managers and team leaders to plan strategically, set goals and objectives for their functional team, and align them with actions, as well as to demonstrate strategic thinking during everyday operations.

August 7, 2009

**IMA's Small Manufacturers Council — Oak Brook**

The Small Manufacturers Council provides a forum for key representatives of small manufacturers to discuss industry trends from a governmental standpoint as well as innovations that can effect day to day efforts. Join us in Oak Brook. Contact: Kimberly McNamara, 800-482-0462, Ext. 2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org).

August 11, 2009

**IMA-MIT Event: Essential Internal Training Skills and Techniques, DePaul University O'Hare Campus, 3166 S. River Rd, Des Plaines**

This program introduces the new internal trainer or subject matter expert to the skills necessary for them to be successful. Essential Internal Training Skills and Techniques covers core skills such as how to create rapport with your learner, how to communicate learning objectives, how to introduce a learning activity, how to ask the right question, and how to engage and re-engage the adult learner.

September 16, 2009

**IMA EVENT: OSHA Recordkeeping — NIU-Naperville Campus, 1120 E. Diehl Rd., Naperville**

8:30 am–Noon, Presenter: Jeff Risch, Partner, SmithAmundsen, LLC Cost: \$125 IMA members; each additional attendee \$100; \$150 Non-members. Contact: Kimberly McNamara, 800-482-0462, Ext. 2109, email: [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org).

November 5, 2009

**IMA EVENT: Sales & Use Tax Seminar NIU-Naperville Campus, 1120 E. Diehl Rd., Naperville, IL**

Join your peers for an update on Illinois Sales & Use Tax presented by Joe Bigane, Wolf & Co. 8:30 a.m.-12:30 p.m. Cost: \$125 IMA members; \$100 each additional attendee; \$200 Non-members. Contact Kimberly McNamara, 800-482-0462, ext. 2109, email [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org).

value to customers. The most successful vendors have been the quickest to adapt to meet consumers' needs, and in today's world this means up-to-date, relevant information available at the click of the mouse. Online capabilities have created revolutionary developments in all industries. Within the energy industry, these features are making measurable differences in the way customers buy and consume electricity.

#### The evolution of energy markets

As the restructuring of electricity markets continues throughout North America, millions of consumers now have the power to choose an energy supplier that best meets their needs. But the complexities in today's energy markets have made the process of determining "what's right for you" slightly intimidating. Fortunately, suppliers have responded with a range of energy management tools to make the process of energy cost management less complicated and more transparent.

For example, NewEnergy Online, is Constellation NewEnergy's answer to a Web-based energy management solution, available free of charge to all existing customers. Customers can track their energy consumption, view current and past invoices, monitor energy market prices and industry news, adjust consumption, and forecast energy usage and costs with greater accuracy.

#### Impact on the manufacturing sector

Let's take a look at how NewEnergy Online is helping manufacturing customers and members of the Illinois Manufacturers' Association.

There is no question the manufacturing industry makes up some of our nation's most sophisticated energy consumers. Consumption patterns and market prices have traditionally remained a closely monitored expense, especially for those manufacturers whose energy costs represent a significant portion of their total operating expenditures. The framework of our online management tool makes proactive monitoring of these factors possible. Manufacturers can easily navigate a facility's energy usage over the course of a day, week, month or year through a private online account. When comprehensive energy consumption and billing history is available on demand, manufacturers not

only assume the ability but also the responsibility to detect patterns, price spikes and monitor their overall energy usage.

These features can be taken a step further by personalizing reports and organizing information to track and highlight specific areas of concern. When tracking is performed on a daily basis, manufacturers can closely monitor the efficiency of a facility's consumption. This specific feature is helping identify problems in the manufacturing process, quickly narrowing in on equipment malfunctions or assembly line interruptions. For instance, manufacturing customers have found they can dramatically lower their electricity costs just by starting up their machines and equipment at different times. This helps mitigate a facility's peak demand — the highest amount of electricity consumed in a billing interval — which can change the billing structure of an account. This is critical as some capacity charges are determined by a customer's peak demand. Unnecessarily high charges can be avoided by examining billing patterns to check for peak demand spikes caused by simultaneous equipment start ups.

Also, NewEnergy Online makes it possible for manufacturers to aggregate costs by grouping meter accounts to take a more holistic view of their total energy consumption. The ability to group meter locations in unlimited combinations allows for sub-account and/or cross-account analysis, thereby helping to identify the most efficient and inefficient operations.

#### Benefits to the bottom line

Understanding how fluctuations in the energy market can impact a business is becoming increasingly more important, especially for large consumers. Online management gives customers access to the latest developments in the energy industry with market price postings, regulatory updates and industry news. This information, coupled with a facility's usage patterns comprises all the factors needed to manage energy strategies and consumption. To better assist customers in their monitoring efforts, NewEnergy Online users have the option to set alerts when energy prices reach a designated threshold, making it possible to adjust usage accordingly.

When it comes to billing, customers need not rely solely on local utilities for distribution

costs and meter reads. More interactive features mean more control over monthly billing, allowing customers to estimate monthly bills based on raw usage data and monthly market prices, and to compare raw meter data with billed energy usage.

With a deeper understanding of energy consumption needs, customers can take advantage of additional tools to reduce or adjust energy consumption and the bottom line. Efficiency practices such as demand response, and other conservation efforts can be implemented in a more frequent and timely manner as customers are able to better predict and maximize these contributions based upon the online analysis of facility demands and market price spikes. Progressive customers are taking advantage of all the tools available to them to better understand their own energy consumption and make informed choices about their company's energy costs. Online energy management tools are not simply an important value added service: they represent a way for manufacturers to better manage energy usage and reduce costs.

Contact Denise Haggerty at [Denise.Haggerty@constellation.com](mailto:Denise.Haggerty@constellation.com) or 312-704-8525 for more information on your energy plan and NewEnergy Online.

## May 2009 Manufacturing ISM Report On Business®

Economic activity in the manufacturing sector failed to grow in May for the 16th consecutive month, while the overall economy grew for the first time following seven months of decline, according to the latest Manufacturing ISM Report On Business®.

"While employment and inventories continue to decline at a rapid rate and the sector continued to contract during the month, there are signs of improvement. May is the first month of growth in the New Orders Index since November 2007, with nine of 18 industries reporting growth. New orders are considered a leading indicator, and the index has risen rapidly after bottoming at 23.1 percent in December 2008. Also, the Customers' Inventories Index remained below 50 percent for the second consecutive month, offering encouragement that supply chains are starting to free themselves of excess inventories as nine industries report their customers' inventories as 'too low,' said Norbert J. Ore, CPSM, C.P.M., chair of the Institute for Supply Management™ Manufacturing Business Survey Committee. "The prices that manufacturers pay for raw materials and services continued to decline, but at a slower rate than in April."

### Are you ready to take charge of your energy costs?

If the answer is YES, visit  
Constellation NewEnergy's Website today. . . .



<http://www.ima-net.org>

**CNE is the IMA affinity partner who will help you develop smart new energy policies.**