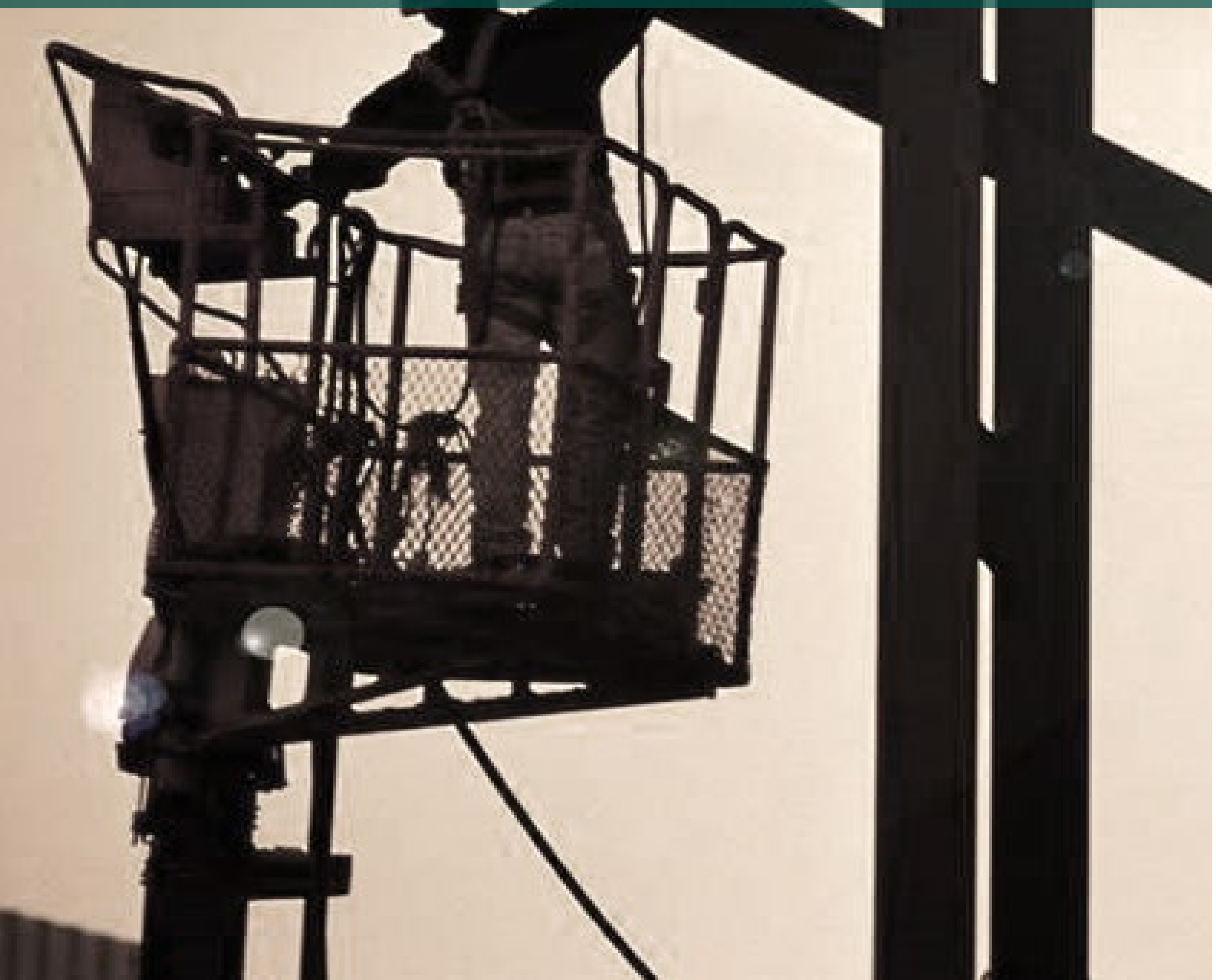
Construction Industry Webinar

Lease Accounting Implementation and Industry Hot Topics

February 15, 2022



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Agenda

- Industry hot topics:
  - Employee Retention Credit
  - State and Local Taxes
- Lease Accounting
  - Understand definition of a lease
  - Review lease classification considerations
  - Gain understanding of determining lease terms (it is not always clear)
  - Review discount rate considerations and recent changes to provide more options on the discount rate used
  - Review financial statement changes and related banking & bonding considerations

Construction Industry Hot Topics

SALT – 2021 In Review and 2022 Going Forward

Reminders and Considerations

- Sunset of Temporary COVID-19 Related Nexus Policies
  - New Jersey – October 1, 2021
  - Pennsylvania – June 30, 2021
  - Philadelphia – June 30, 2021
- Philadelphia Wage Tax Refund
  - Convenience of Employer or Employee? – IT MATTERS!
  - Non-Resident Employee Wage Tax Refund
    - Employer vs. Employee Filing
- Audits and Notices
  - Methods of Discovery – Permits, Registrations, Contracts
  - Response requirements

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SALT – 2021 In Review and 2022 Going Forward

Push for Online Filing and Payment

- Pennsylvania – myPATH
  - Personal Income Tax payments $15,000 or higher are required to be made electronically
    - Up to $500 non-compliance penalty
- Philadelphia – Philadelphia Tax Center
  - City of Philadelphia is requiring all payments be made electronically

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SALT – 2021 In Review and 2022 Going Forward

Nexus Considerations

- Has your company changed its policy regarding remote workers?
  - Employees working from home can create nexus for income and sales and use taxes as well as other state taxes
- Has your company outsourced projects to third parties or subcontractors in states you typically do not operate?
  - Third parties and/or subcontractors can create nexus in states by performing services on your behalf or under your direction and control

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Polling Question

Employee Retention Tax Credit – 2021

- The Employee Retention Tax Credit is a **fully refundable payroll tax** credit for employers equal to 70 percent of **qualified wages** (up to a $10,000 cap) that **Eligible Employers** pay their employees.
- Businesses qualify based on a significant decline in gross receipts or full/partial shutdown of their business.
- The credit is available for 2021 Q1, Q2, and Q3 payroll quarters.
- The maximum credit amount with respect to **EACH EMPLOYEE** is $7,000 **per quarter.**
- For-profit and tax-exempt organizations qualify.

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What is a Significant Decline in Gross Receipts?

- **2021 ERTC** – 1/1/2021 thru 9/30/2021
    - Gross receipts decline by at least 20%
    - Compare Q1 2021 to Q1 <u>2019</u>
    - Compare Q2 2021 to Q2 <u>2019</u>
    - Compare Q3 2021 to Q3 <u>2019</u>

    - Special rule - Eligible Employers can elect to use the preceding quarter's gross receipts which would include looking back to Q4 2020 for purposes of Q1 2021 credit eligibility

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Summary – What Every Business Needs to Evaluate

- Did your business experience a 20% reduction in tax basis gross receipts in the 4th quarter of 2020 compared to the 4th quarter of <u>2019</u>?
- Did your business experience a 20% reduction in tax basis gross receipts in the 1st, 2nd, or 3rd quarter of 2021 compared to the same quarter of <u>2019</u>?
- Was your business required to be partially or fully shut down under a state or local order at any time from March 12, 2020 through September 30, 2021?
  - Broad application – if you believe your business may have been affected by mandates, please consult with your tax advisor.
- How many full-time employees did your business have in <u>2019</u>?

***Aggregation rules apply to commonly owned businesses (revenue decline, operations suspension and total number of employees)**

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Significant Decline in Gross Receipts – EXAMPLE & ENHANCEMENT

2021 ERTC – Start: 20% decline; Stop: 20% decline

EXAMPLE 1

	Gross Receipts	2019 Gross Receipts	Percentage of Prior Year	
2021 1st Quarter	400,000	555,000	72%	**QUALIFY**
2021 2nd Quarter	600,000	555,000	108%	**QUALIFY**

EXAMPLE 2

	Gross Receipts	2019 Gross Receipts	Percentage of Prior Year	
4th quarter 2020	400,000	555,000	72%	**Lookback Election**
1st quarter 2021	600,000	555,000	108%	**QUALIFY**

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What Are Qualified Wages?

- **2021 ERTC** – 1/1/2021 thru 9/30/2021
  - **500** or FEWER employees - **ALL** wages paid to an employee
  - **500** or MORE employees - **ONLY** wages paid to an employee for **NOT** providing services

  - Based on **2019** headcount
  - Wages include qualified health plan expenses
  - Qualified Wages cannot be wages also used in forgiveness of PPP loans (no double dipping)

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2021 Tax Return implications of ERTC

- ERTC is treated for tax purposes as income subject to income tax. Requirement is for the income to be reported on the tax return that matches the ERTC qualified wages
  - Income reported in same year for which credit was claimed
- **Vital 2021 consideration** – if planning to amend previously filed payroll quarters to claim ERTC credit – need to consider this income in computing 2021 taxable income
- If ERTC income not recognized on a previously filed income tax return, requirement is to amend the income tax return to properly report the income in year in which it relates
- Cash consideration challenge – could be required to expend cash flows for income taxes before receiving amended payroll return refunds from claiming ERTC

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State Implications of ERTC

- What type of credit is the ERTC?
  - Majority of states allow an adjustment for federal tax credits
  - ERC is a payroll tax credit <u>**not**</u> an income tax credit
  - Reduction to employer's payroll tax costs
  - IRS guidance is to adjust salaries and wage expense for the credit
- PA Guidance
  - Credit against taxes withheld from employee – deductible
  - Credit against the employer's FICA expense – not deductible
  - More guidance needed
- Other States

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ERTC GAAP Treatment

Analogize to other guidance

- FASB ASC 958-605, Revenue Recognition under Not-for-Profit guidance (Uses Substantially Met Threshold)
    - Record when determined you have met the ERC program criteria and have spent the funds on qualified expenses
    - Cannot offset the expenses incurred with the credit
    - Record as grant revenue or other income
- International Accounting Standards (IAS) 20, Accounting for Government Grants and Disclosures of Government Assistance (Uses Reasonable Assurance Threshold)
    - Record when it is probable that you will meet the ERC program criteria and have spent the funds on qualified expenses
    - Can be recorded net against the expenses
    - Record as grant revenue, other income, or net against expenses

Note – IRS treatment is for the credit to be net against the payroll tax

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ERTC GAAP Treatment

Example – XYZ has qualified for $250,000 ERC credit for Q3-2021 but has not taken the credit in their 2021 payroll tax filings. XYZ plans to amend 2021 filings for the credit. GAAP entries needed for 2021 financial statements:

FASB ASC 958-065:			
	DR: ERC refund receivable	$250,000	
	CR: Grant revenue or other		$250,000

IAS 20:			
	DR: ERC refund receivable	$250,000	
	CR: Grant revenue, other income, or payroll tax expense		$250,000

Contact the Presenters

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Lease Accounting Implementation

Polling Question

What is a Lease

- What is a lease?
  - A lease is defined as a contract that conveys the *right to control* the use of identified property, plant or equipment (an identified asset) for a period of time in exchange for consideration.
- *Right to Control*
  - Determination if the customer has both of the following:
    - The right to obtain substantially all of the economic benefits from use of the identified asset.
    - The right to direct the use of the identified asset.

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Embedded Lease – Example

Example – A construction business contracts with a transportation service provider to deliver heavy equipment or materials to its site.

Although this arrangement is essentially a service contract, it may include embedded leases if it requires the provider to use specific trucks, railcars or other vehicles.

Example – A construction company engages a manufacturer to produce certain prefabricated building components.

If, under your direction, the manufacturer uses a dedicated facility or production line to fulfill the contract, it may contain an embedded lease.

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Polling Question

Lease Classification

- Finance Lease vs. Operating Lease
  - Finance Lease (if any of the following criteria are met):
    - The lease transfers ownership of the underlying asset to the lessee by the end of the lease term.
    - The lease grants the lessee an option to purchase the underlying asset that the lessee is reasonably certain to exercise.
    - The lease term is for the major part of the remaining economic life of the underlying asset.
    - The present value of the sum of lease payments and any residual value guaranteed by the lessee equals or exceeds substantially all of the fair value of the underlying asset.
    - The underlying asset is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term.

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Lease Classification

- Finance Lease vs. Operating Lease
  - Operating Lease
    - When none of the criteria for a finance lease is met, the lessee shall classify the lease as an operating lease.
- Subleases
  - Apply the same criteria

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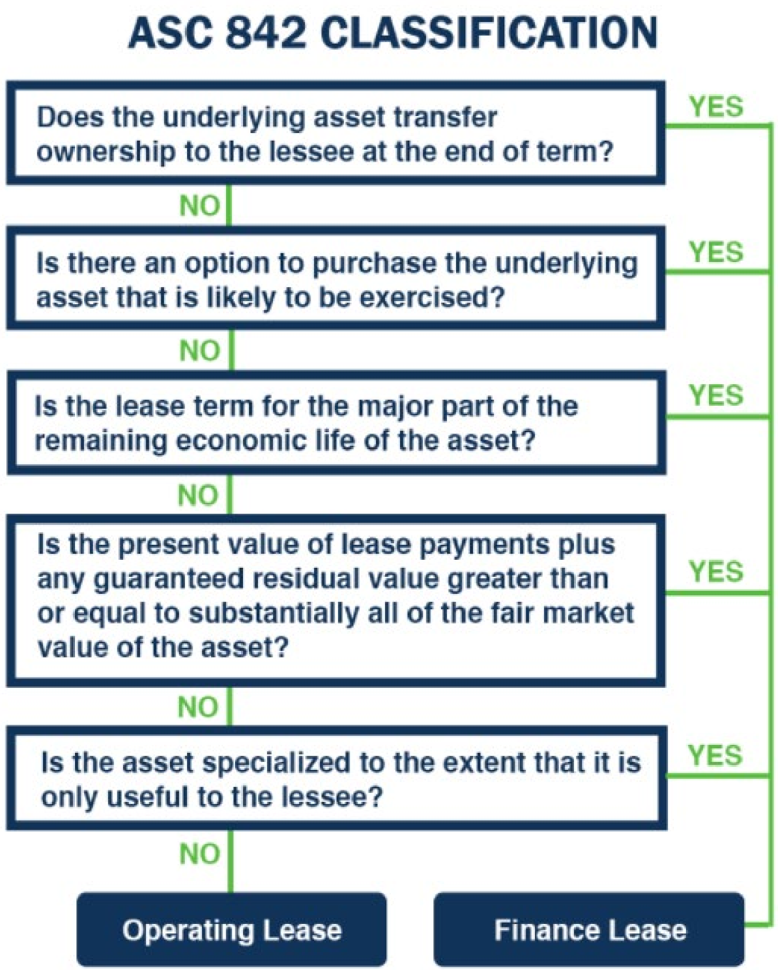
Lease Classification – Example



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Separating Components

- Separating Components of a Contract
  - Separate lease and non-lease components (example: equipment and maintenance)
  - Determine relative standalone price of the separate components (should estimate if not readily available)
  - Allocate consideration to the separate lease and non-lease components of the contract
  - Accounting policy election – may elect to not separate lease and non-lease components and account for whole contract as a lease

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Component Example

Consideration	Type	Reasoning	Examples
Fixed payments for use of the asset	Lease component	Rent payments directly transfer the right to use the underlying asset	Base rent to use space in a building or to use a piece of equipment
Variable payments for use of the asset	Lease component	Rent payments directly transfer the right to use the underlying asset	Usage or mileage-based payments on a vehicle or piece of equipment
Common Area Maintenance (CAM)	Nonlease component	Transfers a good or service to the lessee but does not relate directly to the underlying asset	Building HVAC, public space lighting, parking lot maintenance
Other services	Nonlease component	Transfers a good or service to the lessee but does not relate directly to the underlying asset	Security, janitorial services, administrative services
Reimbursement of lessor expenses	Noncomponent	Landlord is required to pay but the lessee does not directly receive a good or service	Property taxes or insurance
Administrative tasks to initiate the lease	Noncomponent	Lessor is not receiving a good or service	Legal fees, contracting costs

Polling Question

Term Considerations

- An entity shall determine the lease term as the non-cancellable period of the lease, together with all of the following:
  - Periods covered by an option to extend the lease if the lessee is *reasonably certain* to exercise that option
  - Periods covered by an option to terminate the lease if the lessee is *reasonably certain* not to exercise that option
  - Periods covered by an option to extend (or not to terminate) the lease in which exercise of the option is controlled by the lessor

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Term Considerations

- How does FASB define “reasonably certain”?
  - Designed to converge language with IFRS
  - High threshold that is consistent with and intended to be applied in the same way as the “reasonably assured” threshold in the previous lease guidance
  - Very high level of likelihood; greater than “probable”

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Term Considerations

- Short Term Leases
  - Lessees can make an accounting policy election and choose not to recognize a right-of-use asset and lease liability for any lease with a term of 12 months or less and does not include an option to purchase the underlying asset that the lessee is reasonably certain to exercise
    - Recognize the lease payments in profit or loss on a straight-line basis over the lease term

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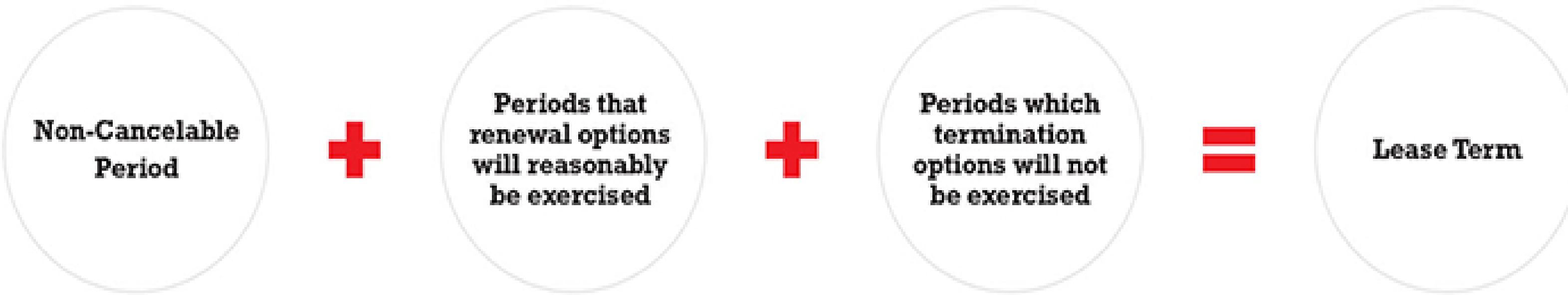
Term Considerations – Example



Term Considerations – Example

Lease Term: A term commencing on January 1, 2021 (Commencement Date) and continuing for sixty-six (66) full calendar months. Tenant shall be granted access to the Premises sixty (60) days prior to the Commencement Date to install equipment and furnishings (the "Early Access Period"). Such access shall be subject to all the terms and conditions of this Lease, except that the Commencement Date and the payment of Rent shall not be triggered thereby.

Based on the language above, the lessee should record the lease on November 1, 2020 (or on the date the lessee possesses the asset) under ASC 840, and the lease term is actually 68 months. The 68-month term is the sum of the written lease term of 66 months plus the two additional months between November 1, 2020 and December 31, 2020 when the lessee will control the asset. Under ASC 842, the tenant records the initial ROU asset and lease liability value as of November 1, 2020 also and begins accounting for the lease as of that date, even though the contract explicitly asserts a commencement date of January 1, 2021.

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Term Considerations – Example Related Party

A lessee rents construction equipment on a month-to-month basis from a related party. The equipment will be used over the period of construction of a building that is expected to take two years to complete. One should consider whether there are implicit legally enforceable terms and conditions that would result in the lease term needing to be evaluated as two years as opposed to one month.

Currently, payments on month-to-month equipment rental agreements are being expensed directly to job cost. If it is determined that the expected lease term will extend beyond 12 months, this lease will need to be recognized and measured on the balance sheet with an allocation of expense to job cost over the lease term. The lease term would be the period of time that the equipment will be used on the job.

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Discount Rate

- Accounting Standards Update (ASU) 2021-09
  - Discount Rate for Lessees that are not Public Business Entities
    - Topic 842 currently provides lessees with a practical expedient that allows them to elect to use a risk-free rate as the discount rate for all leases
    - The amendments in the newest update allows the risk-free rate election to be by class of underlying asset, rather than at the entity-wide level
      - Must disclose which asset classes elected to apply a risk-free rate
      - Amendments require that when the rate implicit in the lease is readily determinable for any individual lease, the lessee must use that rate, regardless of whether it has made the risk-free rate election
  - Currently effective for 12/31/2021 year-ends

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Discount Rate – Deeper Dive

There are three options for determining the discount rate

1. Implicit Rate (IR)

This is defined as the interest rate on a given date that generates the aggregate present value of the lease payments, and the amount a lessor expects to derive from the underlying asset following the end of the lease term.

In practice, it is not likely that the lessee will have the inputs required for this calculation readily available. You would need to know the fair value of the asset leased and the residual value.

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Discount Rate – Deeper Dive

There are three options for determining the discount rate

2. Incremental Borrowing Rate (IBR)

This is defined as the interest rate a lessee would have to pay to borrow, on a collateralized basis, an amount equal to the lease payments over a similar term and in a comparable economic environment.

Among the ways to calculate an IBR are using your rate on existing debt or recent loan; the borrowing rate of similar entities with comparable credit risk; or an interest rate quoted by your lender if you were to borrow funds to purchase a similar asset.

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Discount Rate – Deeper Dive

There are three options for determining the discount rate

3. Risk-Free Rate (RFR)

The RFR is the rate of a zero-coupon U.S. Treasury instrument using a period comparable with the lease term. This provides a practical expedient alternative for private companies.

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Polling Question

Recognition

- Recognize the assets and liabilities that arise from leases at lease commencement
  - Recognize a right-of-use asset, representing its right to use the underlying asset for the lease term, initially measured at the lease liability amount, adjusted for lease prepayments, incentives and initial direct costs (such as commissions)
  - Recognize a liability to make lease payments, initially measured at the present value of lease payments (using the rate implicit in the lease when readily determinable, or the risk-free rate)

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Recognition – Example

Pike Enterprises, Inc. leases a machine for three years on 1/1/year 1. The machine has a fair value of $75,000, a 10-year economic life, and alternative expected uses to the lessor after the lease term. The lease calls for annual lease payments of $10,000 on 12/31 of each year, and the implicit interest rate known to Pike is 5%. The lease conveys no ownership at the end of the lease term, contains no purchase option, and requires no guarantee of residual value. Because this lease does not meet any of the 5 criteria for a finance lease it an operating lease under the new standard, but the lease term is greater than 12 months so the new standard requires balance sheet presentation.

Present value factor for ordinary annuity for 3 years at 5%:	2.72325
Known implicit interest rate:	5%

The present value of the lease payments is calculated as follows:

Annual Lease Payment:	$	10,000
Present value factor for an ordinary annuity for 3 years at 5%:		× 2.72325
Present value of the lease payments:	$	27,233

Recognition – Example

Amortization Table for the Operating Right-of-Use Asset and Operating Lease Liability

Date	Lease Payment	"Interest" on the Operating Liability at 5%	Amortization of Operating Lease Right-of-use Asset and Lease Liability	Account Balances for the Operating Lease Right-of-Use: Asset	Account Balances for the Operating Lease Right-of-Use: Liability
1/1/year 1				$27,233	$27,233
12/31/year 1	$ 10,000	= $1,362	+ $8,638	18,595	18,595
12/31/year 2	10,000	= 930	+ 9,070	9,525	9,525
12/31/year 3	10,000	= 475	+ 9,525	–	–
Totals	$ 30,000	= $2,767	+ $27,233		

Lease expense includes both interest and amortization of the right-of-use asset; thus, the operating lease shows lease expense on a straight-line basis, similar to operating leases under the current standard.

The amortization amounts for the right-of-use asset and the lease liability offset one another; therefore, each account has the same year-end balance.

Recognition – Example

The first year's journal entries would be:

1/1/year 1	Operating Lease Right-of-Use Asset	27,233	
	Operating Lease Liability		27,233

To record the operating right-of-use asset and related liability at the PV of the lease payments.

12/31/year 1	Lease Expense	10,000	
	Operating Lease Liability	8,638	
	Cash		10,000
	Operating Lease Right-of-Use Asset		8,638

To record annual lease payment and expense, and the amortization of the operating lease liability offset against the operating right-of-use asset.

Financial Statement Impact

ABC Test Company, Inc. Balance Sheet As of December 31, 2018	
Assets	
Current Assets	
Cash and Equivalents	6,500,000
Accounts Receivable	1,358,610
Prepaid Expenses	150,000
Other Current Assets	25,000
Total Current Assets	8,033,610
Long Term Assets	
Fixed Assets - Net	1,750,000
Total Assets	**9,783,610**
Liabilities & Equity	
Current Liabilities	
Accounts Payable	860,000
Accrued Expenses	450,000
Short-Term Deferred Revenue	2,650,000
Other Current Liabilities	300,000
Total Current Liabilities	4,260,000
Long Term Liabilities	
Long-Term Deferred Revenue	1,250,000
Deferred Rent	23,610
Total Long Term Liabilities	1,273,610
Equity	
Members Capital	3,000,000
Retained Earnings	1,100,000
Net Income	150,000
Total Equity	**4,250,000**
Total - Liabilities & Equity	**9,783,610**

ABC Test Company, Inc. Balance Sheet As of December 31, 2018	
Assets	
Current Assets	
Cash and Equivalents	6,500,000
Accounts Receivable	1,358,610
Prepaid Expenses	150,000
Other Current Assets	25,000
Total Current Assets	8,033,610
Long Term Assets	
Fixed Assets - Net	1,750,000
Operating ROU Asset	2,046,217
Total Assets	**11,829,827**
Liabilities & Equity	
Current Liabilities	
Accounts Payable	860,000
Accrued Expenses	450,000
Short-Term Deferred Revenue	2,650,000
Short-Term Lease Liability	233,672
Other Current Liabilities	300,000
Total Current Liabilities	4,493,672
Long Term Liabilities	
Long-Term Deferred Revenue	1,250,000
Long-Term Lease Liability	1,836,155
Deferred Rent	-
Total Long Term Liabilities	3,086,155
Equity	
Members Capital	3,000,000
Retained Earnings	1,100,000
Net Income	150,000
Total Equity	**4,250,000**
Total - Liabilities & Equity	**11,829,827**

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Polling Question

Implementation Considerations

- Develop an implementation strategy – Type 1 or Type 2 Modified retrospective transition method of adoption is required to be adopted by lessors and lessees for all existing leases.
  - Identify available resources and a champion for the project
  - Evaluate existing leases and service agreements to identify all operating leases and finance leases
  - Evaluate software considerations
  - Consider accounting policy elections, including available practical expedients
  - Determine transition year financial statement presentation
  - Evaluate terms for new leases and upcoming lease renewals

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Implementation Considerations – Practical Expedients

#1 Lease classification is grandfathered

If a lease was classified as a capital lease under 840, it remains a capital lease.

#2 No re-evaluation of embedded leases

If you were accounting for leases embedded in service and outsourcing contracts appropriately under the old standards, then you don't need to re-evaluate.

#3 You do not have to reassess initial direct costs

Under 840 you could allocate a portion of your internal expenses to initial direct costs. For instance, you could allocate a percentage of the salaries for internal real estate or legal staff. Under 842, initial direct costs are defined as costs you would not have incurred had you not signed the lease – typically external costs, such as broker fees or external legal fees. This expedient states that you don't need to reassess those costs.

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Mark provides audit & accounting and business advisory services to clients in a variety of industries, including construction, distribution, investment management, and manufacturing. He assists businesses in acquisition due diligence, internal control evaluations, corporate governance, succession planning, and financing.

Mark has significant experience in the construction industry and is Kreischer Miler's Construction Industry Group Co-Leader where he develops and provides internal and external training on construction-related topics. In addition to providing traditional audit services, he assists with bonding/credit analysis, benchmarking, accounting department assessments, and other consulting services to general contractors, specialty contractors, heavy and highway, architects and engineers, material suppliers, and equipment dealers.

Mark has also been actively presenting, writing, and consulting with clients on the implementation of ASC 606, Revenue from Contracts with Customers and ASC 842, Leases since the standards were released. He has been assisting companies in the development of accounting policies and processes in order to be in compliance with the revenue recognition and lease accounting standards.

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Mark has a wide range of experience providing audit and accounting services to a variety of businesses, including construction, real estate, and manufacturing. Mark also performs audit services on all types of retirement plans including defined contribution, defined benefit plans, and health and welfare plans. Mark has experience providing forensics accounting support for accounting, damages/lost profits, financial, and internal control issues in commercial litigation matters.

Mark is an active member of Kreischer Miller's Construction Industry Group.

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Dan is an active member of Kreischer Miller's Construction and Not-for-Profit Industry Groups.

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