

# RAMCA NEWSLETTER

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## COURT DECIDES IMPORTANT CONTRACTOR TAX CASE

The Virginia Supreme Court has decided against the city of Lynchburg in a case that could change the way localities around the state levy taxes on contractors. The court recently upheld the decision of a lower court, saying that Lynchburg cannot tax contractors for money earned on projects outside the city, even if the locality where the work is performed does not tax the contractor. Because of the decision, the city will refund more than \$185,000 of taxes to Lynchburg-based English Construction and its partner firm W.C. English. Those taxes were paid on construction projects performed in other parts of Virginia, and the firms sued the city in 2005 to recover the money.

A number of Virginia localities, including Lynchburg, will have to stop taxing money earned by local contractors' long-term jobs in other localities. They also will have to issue refunds to contractors within their borders that have paid taxes on work performed elsewhere.

The conflict between English Construction and the city began in 2004 when city officials conducted a routine audit of English's financial records. The city learned that English had neither re-

ported nor paid taxes on income earned in other parts of Virginia. The city officials said that state law required English to pay Lynchburg's business license tax on gross receipts because English is headquartered in the city. English disagreed, saying that its revenue from work in other localities should be taxed by the localities where the work is performed, or not at all.

"The city said that we owed taxes that we didn't feel we did owe," said James Higginbotham, in-house counsel for English Construction. Higginbotham said that when a company sets up shop in another locality for an extended period of time — some of English's projects require a satellite office to be established for years — then it should not be taxed at home for that work.

In December 2005, the company sued the city of Lynchburg for \$185,472 in taxes the company had paid. As the case played out in Lynchburg Circuit Court, it was said to have statewide implications because Lynchburg was not the only locality in the state to charge taxes on work performed outside its borders. A recent surveyed of the 33 largest localities in the state showed

that 30 of them followed the same practice as Lynchburg.

In April 2008, the local court ruled in favor of English, but the city appealed to the Virginia Supreme Court. The higher court accepted the case in November and heard oral arguments on Feb. 26. One major question of the case was the meaning of a "definite place of business" under Virginia law. Tax laws say that a company has a definite place of business in a locality after being set up there for 30 days, and should pay that locality's taxes. Lynchburg officials said the statute applies to out-of-state firms, but firms in the state should still pay the taxes of their home locality.

The Supreme Court examined the language in the statute and determined that it also applies to in-state firms that have locations in other localities for more than 30 days. The court's written opinion said that Lynchburg couldn't tax income earned from English's business in other localities because the law does not specifically allow that. Seven of the court's 11 judges were present for the vote on the case and voted unanimously against the city.

Because no federal laws are

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## GOVERNOR ANNOUNCES RECOVERY ACT ALLOCATIONS

Governor Timothy M. Kaine recently announced the allocation of \$1.6 billion from the American Recovery and Reinvestment Act to education, public safety and transportation needs in Virginia. The \$1.6 billion allocated to Virginia is targeted at three main areas:

### **K-12 Education Allocations, Public Safety Grants to Localities, and Transportation.**

**Transportation Infrastructure Funding**—Virginia will receive a total of \$694.5 million in highway funding, \$118 million of which will be for projects selected by the state's three urban metropolitan planning organizations (MPOs) in Washington, D.C., Richmond, and Hampton Roads. The remaining highway infrastructure investment funding may be used for federally qualifying surface transportation projects selected by the Commonwealth Transportation Board. Approximately \$116 million will be distributed to transit operators in Virginia. The Act also creates several discretionary grant programs that can help advance transportation projects such as innovative highway projects, intercity and high-speed rail projects, and new transit service expansions. \$465.3 million will be used in economically distressed areas. \$117.8 million is slated for urban areas with a population greater than 200,000, \$76.1 million for suburban areas, \$14.4 million for rural areas under 5000 population, and \$20.8 million for local transportation enhancement projects.

More information about the highway funding from the Act can be found at <http://www.fhwa.dot.gov/economicrecovery/index.htm>

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## BROKEN CLAY PIGEON SHOOT REMAINS POPULAR

RAMCA's third annual "Broken Clay Pigeon Shoot" brought nearly forty RAMCA members out to Old Forge Sporting Clays in Providence Forge on a beautiful April afternoon for some spirited shooting competition. Five-man teams competed at various stations with each shooter having the opportunity to fire at 100 targets.

The big first place trophy went to the team from RAMCA's newest member, Adler Tank Rentals, with a score of 333. Adler's winning shooters were: Ted O'Conner, Dan Gadams, Russ Waymack, John Pepper, and Taylor McCann. Second place trophies were awarded to Branscome Richmond Team #2 which included Chris Evans, Curtis Buchanan, Chad Buchanan, Allen Maxwell, and Raymond Douglas with a score of 301.

Special thanks to Branscome Richmond for sponsoring the post-event catered dinner. Check out the home page of the RAMCA website for photos of this event.

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## CHESTERFIELD MAKES NEW SPECS AVAILABLE

Many months ago RAMCA expressed concern to representatives of Chesterfield as to why a hard copy of their Water and Sewer Specifications and Procedures Manual did not appear to be available for utility contractors and other affected parties. In addition, there was some confusion among spec users regarding whether all of the pages of the version they were using to design, bid, and install work were current. RAMCA met with utility staff and reached an agreement that the County would ensure this document was current and readily available on line, along with any periodic updates. In addition, the County has agreed to provide those who wanted one, or those who do not have access to the internet with one hard copy of the document, and to provide any future updates by mail for non-internet users.

It turns out that after our objections and the County's quick and appropriate response, not many contractors have taken advantage of the free manual!

Computers are great but sometimes there is no substitute for having a hard copy in your office, particularly for something as important as Chesterfield County's water and sewer specs. If you do not already have yours and are a utility contractor or work with utility contractors RAMCA urges you to take advantage of this free publication. To obtain a copy simply call Becky Lindsey at the County at 748-1869 a couple of days in advance of your pickup date. The County will have your manual ready for you when you arrive.

## VIRGINIA LEGISLATORS STARTING TO GET THE RAMCA MESSAGE

Earlier this month Delegate Lacey Putney, Chairman of the House Appropriations Committee (which determines how state funds are allocated) publicly indicated that it is time to seriously consider new funding for highways. He further indicated that he did not know what form the new revenue stream would take. In a meeting with the State Chamber of Commerce Putney said, "I'm saying the time has come to do something on transportation." With regard to whether the federal stimulus package (see previous newsletter article) Putney said, "Folks, let me tell you, \$700 million is peanuts. It's pocket change when we are talking about needs in transportation."

In an even more hopeful sign, the Chairman of the House Transportation Committee, Joe May, said he plans to introduce a bill naming former Governors Baliles and Allen to a bipartisan commission that would recommend new revenue sources for transportation.

Some speculate that the republican-controlled House of Delegates majority held back on addressing this need, thereby denying Virginia's current Democratic Governor Tim Kaine a big legislative victory. Kaine will be out of office by the next session of the legislature, and things coincidentally appear to be moving forward in the area of transportation funding.

Whatever the reason, RAMCA members are very glad to see this new movement in the right direction and will be working closely with state legislators as these proposals begin to take shape. VDOT has already cut \$3 billion out of the current six year plan. Relief cannot come quick enough!!

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## RAMCA GETS LEGISLATIVE REPORT

At the March 12<sup>th</sup> RAMCA General Membership Meeting members heard RAMCA's lobbyists Whit Clement and Myles Louria from the law firm of Hunton & Williams present a wrap up of the 2009 session of the Virginia General Assembly. In addition, our speakers spent a considerable amount of time discussing the im-

pact of federal stimulus dollars in the greater Richmond area, as well as handicapping the upcoming elections for all 100 members of the Virginia House of Delegates and for the state's three top officeholders – the Attorney General, the Lt. Governor, and the Governor – in November of this year

DINNER SPONSORSHIPS ARE AVAILABLE TO ALL RAMCA ASSOCIATE MEMBERS FOR THE OCTOBER AND NOVEMBER GENERAL MEMBERSHIP MEETINGS. FOR MORE INFORMATION CALL THE RAMCA OFFICE.

**RAMCA would like to recognize and thank our Dinner Sponsor for this meeting, the law firm of *Sands, Anderson, Marks, and Miller*, who as sponsors were able to address the gathering about their many legal services available to contractors.**

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## MEMBERS IN THE NEWS

RAMCA would like to recognize and welcome our newest member, Adler Tank Rentals. Please welcome Adler, and their designated representative, Ted O'Conner, at the next RAMCA gathering. Ted and his team at Adler wasted no time getting involved with RAMCA. They entered and won the recently held RAMCA Bro-

ken Clay Pigeon Shoot (see above article)!



**RAMCA Officers**

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## NEW REQUIREMENTS FOR HIGHWAY WORK ZONE PERSONNEL

RAMCA members are reminded that effective July 1<sup>st</sup>, VDOT will be enforcing a new work zone traffic control certification. The program has been created as a result of a federal mandate to have construction personnel adequately trained in traffic control planning, design, and implementation.

Three courses are being offered that certify workers at three different levels.

Basic for field personnel involved in set-up of traffic devices

Intermediate – for supervisory level workers involved in set up of traffic control devices

Advanced – for those who are responsible for designing and planning traffic control jobsite

One of the requirements for certification is the completion of an approved training class at any or all of the three levels mentioned above. This is a mandatory program and RAMCA members who are involved in VDOT road projects need to be in compliance by July 1<sup>st</sup>. For more info call your VDOT contact or go to the VDOT website and search for – Work Zone Traffic Control Program.

## RAMCA AWARDS 2009-10 SCHOLARSHIPS

Each year RAMCA provides member firms with an opportunity to reward students of employees with a RAMCA scholarship. Scholarship requests were mailed to all member firms in January and the RAMCA Scholarship Committee, consisting of Ken Creasy (Superior Excavating) and Mike Harcum (Carter Machinery), met last month to review nine applications. The committee's recommendations for RAMCA's

2009-10 scholarship awards were presented to the board at their March 12<sup>th</sup> meeting. After discussion and by motion duly made, sec-



onded, and carried the Board approved the following awards:

Alex Paulini - sponsored by Lyttle Utilities Attending Virginia Tech Award Amount - \$750

Ms. Coco McBride – sponsored by Draper Aden Associates Attending Virginia Tech Award Amount - \$1000

Ms. Patricia Houser – Sponsored by Blake-more Construction Attending Sweet Briar Award Amount - \$500

Ms. Marie Dunlap – Sponsored by Shoosmith Attending UVa Award Amount - \$750

Congrats to these fine students. RAMCA wishes them well as they pursue their higher education goals.