



**WASHINGTON WIRE**

## **NAED Washington Wire – Week of April 1, 2024**

Congress managed to pass a last-minute funding bill preventing another shutdown until the end of September. Passing this \$1.2 trillion spending bill did not come without political drama, as fiery speeches on the floor about border security and Speaker Johnson’s role in negotiations led up to the 2am passage of the bill. The Senate continues to debate the House-passed tax bill which includes important business provisions for NAED members.

News on regulations has been a mixed bag with DOL’s Walkaround Rule being finalized and the joint-employer standard rule being vacated. NAED has teamed up with our industry partners in an effort to correct implementing regulations on the 25C tax credit, with the goal of ensuring distributors are not adversely affected by new product PIN requirements.

Here are a few of the issues that we are tracking out of Washington, DC:

### **Government Shutdown Averted Again**

As we reported in our last Washington Wire, Speaker Johnson has been having a tough go at building consensus in the caucus after succeeding ousted Speaker Kevin McCarthy. The last round of government funding put his leadership to the test again. Speaker Johnson was able to negotiate the passage of a “minibus” – a set of 6 bills packaged together to fund the government, clearing the finish line at nearly 2am during the weekend.

### **NAED Teams Up with Industry Partners on 25C Tax Credit Fix**

Electrical distributors’ role in complying with regulations is often overlooked by policymakers. One of the greatest challenges to successfully implementing the goals of IJJA and IRA is product availability and supply chain challenges. One of the greatest supply chain challenges distributors face is access to accurate and timely product information from manufacturers. NAED estimates more than \$60 billion annually is lost due to inefficient exchange of product information between trading partners. The implementation of the 25C tax

credit has the potential to cause supply chain headaches and even more loss of information between trading partners.

In order to track products eligible for the tax credit, regulators have proposed a novel PIN system, which is completely out of sync with how the industry currently tracks equipment. Even tracking “enabling properties” which consist of products like panelboards, sub-panelboards, branch circuits, and feeders would require the new PIN system. NEMA filed comments in response to an RFI “on Product Identification Numbers and the Energy Efficient Home Improvement Credit under Section 25C” requesting that “enabling properties” be exempt from the PIN requirements and that the industry be allowed to track equipment under current systems, utilizing proven tracking methods like SKUs. NAED has worked with our industry partners at NEMA and NECA to craft a joint response and this week we requested a meeting with the Treasury Department to resolve these issues. We will continue to keep you updated as NAED works to make sure distributors are not adversely affected by 25C regulations.

## **DOL Joint Employer Rule Vacated**

NAED has helped to do our part in fighting the “joint-employer” standard at every turn. This year, we supported successful resolutions in the House and Senate to nullify the standard. You can read the letter supporting the Congressional effort [here](#). The letter reads in part: “This rule places significant burdens on small businesses, particularly those who are a part of the franchise business model. Complying with its complex and ambiguous standards will require costly legal consultations, operational adjustments, and administrative changes.”

Previously, NLRB held that a business must possess “direct control” over another to be considered a joint-employer. The new NLRB rule changed that standard to “indirect control” or even “theoretical control,” which could create significant problems for NAED businesses that employ temporary workers or function as franchises.

Last month, we received welcome news that a federal judge of the U.S. District Court for the Eastern District of Texas vacated the rule. Post ruling, the traditional employer standard requiring direct control currently applies.

## **DOL Walkaround Rule Finalized**

Last month, the Department of Labor finalized its “Walkaround Rule.” The rule allows third parties to accompany OSHA inspectors in the event they are deemed reasonably necessary, which leaves business owners open to frivolous lawsuits and allows those potentially looking to do harm to the business on the premises. Our partners at the Coalition for a Democratic Workplace (CDW) issued a statement condemning the rule [here](#). The statement reads in part: “The rule provides no clarity for how OSHA safety and health officers are supposed to determine if a chosen representative should be allowed to participate in the inspection. Moreover, there’s no limit to the number of representatives that can participate, meaning multiple unions trying to organize a workplace could be permitted access. OSHA inspectors will be forced into a position to police these representatives’ behavior, which could include intentionally disrupting the workplace and instigating dysfunction.” The rule is now currently in effect but is likely to face legal challenges. We will continue to keep you updated about litigation and Congressional action surrounding the Walkaround Rule.

## Senate Fights the Clock on Tax Bill, Filing Season Approaches

NAED is supporting Congressional efforts to restore small business tax and expensing provisions which have been phasing out over the past several years. A House bill to address these issues passed in January of this year on a bipartisan basis and has been awaiting action in the Senate. Senate complaints about the bill have ranged from opposition to the “payfor” used to fund it, to opposition to child tax credit provisions in the legislation. Most importantly for NAED members, the bill includes addressing bonus depreciation (Section 168(k), which phased down from 100% to 80% in 2023 and currently sits at 60% effective January 1st of this year. The House-passed tax bill would restore full bonus depreciation retroactive back to 2022, restore the full EBITDA base for the business interest expense, and restore full R&D expensing. With tax filings due in only one week, NAED is pushing the Senate to move asap on this bill. If the legislation doesn’t clear the Senate soon, we will likely have to wait until the lame-duck period after the November elections for possible movement.

A much larger tax threat looms in 2025 as many of the Tax Cuts and Jobs Act tax cuts including the estate tax, 20% small business deduction, marginal tax rates, and more expensing rules expire. NAED is an advisory board member of the Family Business Coalition (FBC), which is urging Congress to make the TCJA small business tax changes permanent. Our multi-generational family businesses that keep NAED strong are worth protecting and tax policy is a major driver of small business dissolution/consolidation. FBC Chairman Palmer Schoening recently [testified](#) in front of the Senate Small Business Committee on the need for permanent tax policy to help family businesses pass to the next generation of ownership.

## Reminder: Talk to your Tax Professionals about New DOL Independent Contractor Standards

Last month, the Department of Labor issued its Final Rule, “Employee or Independent Contractor Classification Under the Fair Labor Standards Act.” Litigation is pending and Congress wasted no time in responding. On March 21, 2024, the House Committee on Education and the Workforce advanced out of committee an NAED-supported Congressional Review Act (CRA) resolution to rescind the independent contractor regulation. The resolution will pass the House, and Senator Bill Cassidy (R-LA), ranking member of the HELP committee, plans to offer a companion resolution in the Senate.

If your distribution business employs independent contractors, be sure to talk to your tax professionals about more stringent requirements. The new rule returns the non-exhaustive six factor test to determine whether a worker should be classified as an employee (and therefore eligible for overtime and additional benefits) or an independent contractor. The six factors are:

- 1) Opportunity for Profit or Loss Depending on Managerial Skill
- 2) Investments by the Worker and the Potential Employer
- 3) The Degree of Permanence of the Work Relationship
- 4) The Nature and Degree of Control
- 5) The Extent to Which the Work Performed is an Integral Part of the Potential Employer’s Business
- 6) Skill and Initiative

Determining Independent contractor classification was already a challenge for employers before the issuance of this rule, which serves to make things even murkier for business owners. NAED has joined a coalition urging Congress to fight back and our team will keep you updated on pending legal challenges to the standard. For now, the new rule is the law of the land so make sure to talk to your tax professionals about compliance.

## Reminder: Is your business ready for the Corporate Transparency Act (CTA)?

Starting this year, more than 32 million small businesses are now newly-required to provide information on “beneficial ownership” to FinCen, Financial Crimes Enforcement Network. For NAED businesses with questions about complying with this law, we highly recommend you and your tax professionals review a webinar from the S-Corp Association, which takes a deep dive into CTA compliance [here](#).

Last month, a federal court declared the Corporate Transparency Act unconstitutional. Federal regulators (FinCEN), however, [announced](#) they will continue enforcing the statute. The only small businesses that will get a reprieve are members of the National Small Business Association, which filed the suit challenging the law, but courts may extend this exemption to all small businesses in future rulings.

NAED is pushing Congress to adopt legislation that would officially delay implementation of the law until small businesses can catch up with the compliance requirements. NAED partnered with 125 other small businesses associations in [urging the Senate](#) to follow the House’s lead and act on this legislation.

## Political and Elections Update

During Super Tuesday last month, 854 Republican delegates were up for grabs across 15 states, representing the lion’s share of delegates required to clinch the nomination. President Trump solidified his hold on the Republican nomination with his lead rival Secretary Haley dropping out shortly after the big day. President Biden continues to win primaries as his top contender, RFK Jr., has announced an independent run for the Presidency. Polling has the Presidential race neck and neck with some recent surveys showing Trump leading in key battleground states. In the race for the Senate, Democrats (and Independents who caucus with Democrats) currently hold 23 seats that are up in November, while Republicans are defending only 11 Senate seats this year. Importantly, Republicans are not defending any Senate seats in states that did not go for Trump in 2020 and only need to gain two seats to restore their majority amongst the 7 Democratic seats currently in play. Those seats are in the following states: Michigan, Nevada, Pennsylvania, Wisconsin, Montana, Ohio, and West Virginia. While the Senate looks encouraging for Republicans based on the number of vulnerable seats up for grabs, the House is less certain and will hinge largely on the results of the Presidential race. Stay tuned – in our next Washington Wire, we will dive into polling 6 months out from the elections and discuss the electoral state of play in the House of Representatives.

As always feel free to reach out with any questions or feedback at [EOrlet@NAED.org](mailto:EOrlet@NAED.org).