July 2024

NAED Takes an Active Role with Tax Reform Working Groups

The tax-writing House Ways and Means Committee under the leadership of Chairman Jason Smith (R-MO) has created new working groups to address specific areas of the expiring Tax Cuts and Jobs Act (TCJA). The working groups include American Manufacturing, Working Families, American Workforce, Main Street, New Economy, Rural America, Community Development, Supply Chains, U.S. Innovation, and Global Competitiveness.

The Tax Cuts and Jobs Act included provisions that cut taxes for NAED members. One of the most important pieces of the Act is the Section 199A deduction for qualified business income, which is slated to disappear next year if no legislation is passed to extend it. The 20% small business tax deduction is the main provision that Republicans included in the bill to reduce taxes for pass-through NAED businesses. This month, NAED joined with our partners at the Main Street Employers Coalition in pushing the tax teams for a permanent extension of the small business tax deduction.

The NAED-supported comments, submitted to the House Ways and Means Committee's Main Street working group, state in part: "The Main Street Employers Coalition (MSEC) is comprised of dozens of trade associations representing businesses operating in virtually every industry and community across the country. The vast majority of these businesses are structured as pass-throughs – S corporations, partnerships, and sole proprietorships – and they rely on the Section 199A pass-through deduction to help them grow, create jobs, and remain competitive. As members of the Main Street Tax Team continue their important work, we ask that you protect these businesses by making permanent the Section 199A pass-through deduction."

You can read the full NAED supported comments **here**.

In addition, our government affairs team is taking part in monthly LIFO "Last in First Out" strategy meetings and joining allies in LIFO meetings with key Congressional staff on Capitol Hill.

These joint hill meetings have focused on members of the Supply Chain working group which is responsible for issuing recommendations on the treatment of LIFO. Over the past several Congresses, members of both parties have contemplated using LIFO repeal as a "pay-for" on major tax bills. If repealed, NAED companies using LIFO would be forced to report their reserves as income, resulting in a massive incremental tax liability. We are working with our allies to keep LIFO off the table in next year's tax debate.

NAED is an active advisory board member of the Family Business Coalition (FBC), a group focused on lowering taxes on family owned and operated businesses and repealing the estate tax ("death tax"). Last month, FBC arranged a briefing for the Ways and Means Rural America and Main Street working groups in Washington, DC. Members and staffers were highly engaged and asked questions throughout the hour-long presentation on the death tax, the 20% small business tax deduction, tax parity between c-corps and pass-through businesses, and the challenges that family businesses face in transitioning to the next generation of ownership.

We have put a number of NAED businesses in touch with the tax working groups and are arranging for our members to participate in more tax-related events and site visits across the country. We will keep you updated as our team works to ensure taxes are not increased on NAED member businesses.

NAED Demands Regulators Take "Pause" After Chevron

In the past, courts dealing with ambiguous federal agency regulations were forced to rely on what is dubbed "Chevron deference." Generally, important decisions about how to implement regulations were decided by deferring back to the agencies themselves who promulgated the rules in the first place. Last month, the "Loper decision" changed this longstanding deference and is being touted as a major win for opponents of unaccountable agency rulemaking.

NAED was quick to support an effort by our friends at the National Association of Wholesaler-Distributors, demanding that given the new Supreme Court ruling, agencies immediately move to stop new rules from going into effect. Politico reported: "Trade groups' push for the Biden administration to halt or revisit its rulemaking altogether could signal that more pushbacks may be on the horizon to fight rules that businesses view as too costly or harmful to the economy."
The letter reads in part: "Considering the Supreme Court's recent decision in Loper Bright Enterprises et al. v. Raimondo we ask your Administration to pause all current rulemakings and stop new rules from taking effect until there is a thorough legal review of each agency's constitutional and statutory authority to regulate in the way it proposes."

Congress is likewise demanding a pause. House Majority Leader Scalise and Rep. Comer urged agencies this month to review "overreaching" regulations and to provide a list of rules that could be impacted by the ruling. The Senate has formed an official working group that will recommend best practices for legislating post Chevron. Sen. Eric Schmitt (R-Mo.), a leading member of the group, told reporters: "Congress has abdicated its duty to legislate to nameless and faceless bureaucrats at agencies dotted around D.C. — it's time to take that power back and return to a truly representative government."

NAED, along with other leading trade associations, has **asked** agencies in the Biden Administration to stop new rules and regulations from going into effect until there is a thorough legal review of each agency's constitutional and statutory authority to regulate.

OSHA Heat Standard Could Burn NAED Employers

This month, OSHA released its proposed rule on "Heat Illness Prevention in Outdoor and Indoor Work Settings", available **here**. Additional materials are available on OSHA's rulemaking website **here**.
The **Washington Post** provides some insight on the proposed rule below:

"OSHA would adopt two heat index thresholds that would apply nationally and would factor in humidity as well as temperature. One, at 80 degrees Fahrenheit, would require employers to provide drinking water and break areas that workers can use as needed. Employers would also need to have a plan for new and returning workers to gradually increase their workload so their bodies adjust to the heat. More protections would kick in at 90 degrees, including monitoring for signs of heat illness and mandatory 15 minute rest breaks every two hours. Employers would be required to check on people working alone every few hours and to issue a hazard alert, reminding their workers of the importance of staying hydrated."

And **Politico** adds:

"The proposed rules would not cover workers who are only briefly exposed to high temperatures — such as traveling outdoors between buildings — or where the nature of the job makes such protections infeasible, including emergency response. Employers covered by the rule will have to designate a heat safety coordinator and evaluate their heat safety plans every year. They will also have to monitor workers' exposure, such as by tracking heat index or using a measure called the **Wet Bulb Globe Temperature** — a tool that incorporates temperature, humidity, wind and other factors to assess potential heat stress. Minnesota uses the tool as part of safety standards for indoor workers, and several states use heat index to protect those working outside. OSHA's proposal layers on four additional precautions when the heat index reaches beyond 90 degrees. They include mandatory 15-minute rest breaks for all employees every two hours, observing employees for symptoms, periodic check-ins with isolated workers and reminders to workers to rest and drink water."

More OSHA: Walk Around Rule Challenged

On July 3, the Coalition for a Democratic Workplace (CDW), of which NAED is a member, filed an **amicus brief** in the District Court for the Western District of Texas for **Chamber of Commerce of the United States, et al. v. Occupational Safety and Health Administration, et al.** This case challenges **OSHA's final rule** which allows third parties to accompany OSHA safety and health officers on facility inspections. The walkaround rule officially took effect on May 31st. CDW has consistently raised **concerns** about this policy. Their amicus brief asserts that the rule far exceeds OSHA's authority while also conflicting with the National Labor Relations Act (NLRA).

CDW's statement on the amicus brief can be read **here**, and their statement on the rule can be viewed **here**.

The exact language in the final rule is below:

§ 1903.8 Representatives of employers and employees.

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(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

We will continue to keep you updated on litigation and Congressional action surrounding the walkaround rule.

New Guidance on IRA Apprenticeship and Prevailing Wage Bonus

New guidance regarding requirements tied to credits/deductions for Inflation Reduction Act (IRA) clean energy incentives has just been released by the Treasury Department. The final rules seek to promote high-paying construction jobs and union-backed apprenticeships in exchange for more generous tax credits. Many of the tax credits can be worth five-times more if workers on a given project are paid the prevailing wage. The rules also stipulate that a certain percentage of the work needs to be performed by registered apprentices to claim the more generous credits. To stay up to date on the latest requirements, make sure your tax professionals consult the IRS tax information sheet **here** and the Department of Labor's Prevailing Wage Act FAQ sheet **here**.

The IRS tax information sheet states: "By paying prevailing wages and using qualified apprentices, taxpayers can increase the base amounts of many clean energy tax incentives, in general, by 5 times. There are limited exceptions available where taxpayers may be eligible to claim the 5 times increase on a particular clean energy tax incentive without meeting the PWA requirements."

Political Update

As we reported last month, "with less than 6 months until November, the Presidential race will assuredly have many more twists and turns before election day" …and wow was that an understatement. We have been caught in a whirlwind of non-stop political news this month – from the Presidential debate, to the heart-stopping incident at the rally in Pennsylvania, to the choice of Ohio Senator JD Vance to be President Trump's running mate, to President Biden withdrawing from the 2024 race and endorsing Vice President Harris.

The Democrats hold their convention in Chicago on August 19th with VP Harris currently the favorite to win the nomination, but still missing some key endorsements like that of former President Obama. Ohio Senator JD Vance has accepted the nomination for Vice President on the Republican ticket. Vance detailed his personal story, echoing themes from his bestselling book, "Hillbilly Elegy", to a crowd of party delegates and supporters at the RNC convention this month. Vance has been branded as a 'populist' Republican and we'll explore what that means next month by analyzing the Senator's past policy stances – as well as VP Harris's Senate voting record.

Contact Us

Thank you for staying engaged with NAED's government affairs work and please feel free to reach out to NAED Senior Vice President Edward Orlet with any questions or comments at: **EOrlet@naed.org.**