

November 20, 2009

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WP-11-20-09

SKI SUN VALLEY AND SUPPORT THE WPMA SCHOLARSHIP FOUNDATION!

You can support the Scholarship Foundation while enjoying a great day of skiing on the slopes of Sun Valley Resort in Sun Valley, Idaho! Two adult one-day ski passes to Sun Valley Resort's Bald Mountain have been donated to the Foundation. The passes are good for the 2009-2010 regular ski season - December 14 - 25, 2009 & January 3 - March 29, 2010 (retail value \$82 each, expire May 7, 2010). The Foundation is offering these passes to the highest bidder. To make a bid on the passes, e-mail kathym@wpma.com with your contact information and bid amount. The bidding will be cut off at 5:00 p.m. MST on Thursday, December 9th, and the bid winner will be announced in the Update on Friday, December 10th.

AMENDED WETLINES BILL APPROVED BY HOUSE COMMITTEE

Because of substantial industry opposition to legislation requiring gasoline transport trucks to use wetlines purging equipment, Representative James Oberstar (D-MN), Chairman of the Transportation and Infrastructure Committee, proposed compromise language that was revised and amended during the markup held yesterday.

Originally Oberstar proposed language that would respond to PMAA's request to allow the U.S. Department of Transportation (DOT) to have the final say on wetlines regulation through rulemaking. Unfortunately, Oberstar was only giving DOT full jurisdiction over "retrofits" and would force DOT to act within three years or retrofits would be required in 2020. In working with several members of the committee, PMAA had asked for a date later than 2020. Ultimately, the retrofit date was moved to 2025; however, the rulemaking provision was not included.

When approved, the wetlines language passed on a voice (non-recorded) vote, therefore we cannot report who voted for and against the measure. PMAA plans to pursue some floor amendments with Rep. Oberstar and will begin proactive lobbying efforts in the Senate.

INTERCHANGE FEES REPORT SLAMS CREDIT CARD INDUSTRY

On Thursday, the Government Accountability Office (GAO) issued its long anticipated report on credit card interchange fees. The report highlighted that Visa and MasterCard have been misleading the public about the unfair and burdensome swipe fees. Specifically, the report disputed Visa and MasterCard officials' account that average interchange rates have remained fairly constant over the last 20 years. GAO said that Visa and MasterCard's anti-competitive practices have actually led to dramatically increased interchange rates. For instance, both networks' corporate card's swipe fee rates have increased considerably – Visa by 36 percent and MasterCard by 82 percent. The near-monopoly market power of Visa and MasterCard allows both companies to "raise prices without suffering competitive effects..."

GAO also highlighted that "if negotiations resulted in lower interchange fees for merchants, then merchants could pass these savings to consumers through lower prices." PMAA praises this statement because it highlights the competitiveness of the motor fuels industry. PMAA continues to reiterate to lawmakers that savings from reduced interchange fees will ultimately be returned to the consumers' pocketbook. However, the oligopoly power of Visa and MasterCard makes it impossible for small businesses to negotiate lower fees. Additionally, GAO reported that "Increased retailer costs for card transactions may lead to higher prices for non-cardholding consumers," therefore, all customers may be paying higher prices for goods and services, whether using a credit card or not."

Finally, the report acknowledged that Visa and MasterCard's swipe fee structure is complicated and confusing, "in 1991, the card companies each had 4 standard domestic interchange fee rate categories, but by 2009, Visa had 60 and MasterCard had 243 different rate categories that could be charged to card transactions."

PMAA applauds the GAO for the comprehensive report on credit card interchange fees. PMAA and the Merchants Payment Coalition (MPC) continue to urge legislators to pass legislation that will give retailer groups the opportunity to negotiate interchange fees in a transparent environment. PMAA believes these negotiations will put downward pressure on interchange fees and force credit card companies to provide justification for the rates charged. Senate Banking Committee Chairman Christopher Dodd (D-CT) has repeatedly said that he would tackle interchange fees during this Congress. To view a copy of the report, please visit: <http://www.gao.gov/new.items/d1045.pdf>.

SENATE COMMITTEE APPROVES PACT ACT

Yesterday, the Senate Judiciary Committee approved, by voice vote, a substitute version of the "Prevent All Cigarette Trafficking (PACT) Act of 2009" (S. 1147). This is a significant victory for PMAA, along with the new "Coalition to Stop Contraband Tobacco." The bill also gained Republican Senators John Cornyn (R-TX), Pete Sessions (R-AL) and Orrin Hatch (R-UT), bringing the total number of cosponsors to 16 (13 Democrats, 3 Republicans). Now, PMAA will work with House and Senate leadership and Judiciary Committee staff to expedite passage of the PACT Act which will level the playing field between small business retailers who legally sell tobacco products to adults, and those who avoid paying taxes by selling tobacco products over the Internet, phone or through the mail. Earlier this year, the House passed a similar bill by an overwhelming majority vote of (397 - 11).

S. 1147 would curb the illegal sales of tobacco products via Internet, mail delivery and over the phone. The bill would require tobacco sellers to verify the age of buyers who purchase products over the Internet and the phone, and require online tobacco sellers and other entities to keep delivery sales records. The bill would also treat tobacco products as non-mailable and prohibit them from being deposited in or carried through the United States Postal Service and would ensure that Internet, mail delivery and phone tobacco sellers pay federal excise taxes.

Sellers of tobacco via the Internet, postal service and phone can easily avoid paying excise taxes on tobacco which put retailers at a competitive disadvantage. Additionally, state governments lose revenue each year and minors are able to illegally purchase tobacco products from the marketing of tobacco via the Internet. Given the recent 62 cent cigarette tax increase, PMAA is concerned that sellers of tobacco via Internet, mail delivery and phone will increase as consumers look for ways to avoid paying state excise taxes on tobacco products.

Some changes were made to the bill; however, none of the changes would affect retailers. The substitute amendment strikes section 7 of the bill which would have required the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives to create regional contraband tobacco trafficking teams in major cities around the country to monitor and coordinate tobacco diversion investigations.

Thanks for the strong grassroots outreach that many of you made to express your support for the bill. More information about the coalition can be found at www.coalitionstoptobacco.com and www.PactActNow.com.

SENATE HEARS TESTIMONY FROM CFTC CHAIRMAN

On Wednesday the Senate Agriculture Committee held its first hearing under the chairmanship of Senator Blanche Lincoln (D-AR). Those who testified before the Committee were: Chairman Gary Gensler, Commodity Futures Trading Commission; Glenn English, National Rural Electric Cooperatives; Neil Schloss, Ford Motor Company; Mark Boling, Southwestern Energy Company; Jeff Billings, Municipal Gas Authority of Georgia; and Robert Johnson, Americans for Financial Reform.

Chairman Gensler highlighted four important segments of over-the-counter (OTC) derivatives reform: that all standardized contracts must trade on exchanges which will increase transparency and promote price discovery; all customized contracts that cannot be exchange traded or cleared must be reported to a trade repository; data on OTC derivatives transactions (both customized and standardized) should be aggregated and made available to the public; and stringent recordkeeping and reporting requirements should be established. Essentially, Gensler's two primary goals are to lower risk and promote transparency which will benefit all players in the market, prevent systemic risk and keep volatile commodity prices in check. With the OTC derivatives market at an estimated 20 times the size of the American economy; PMAA is urging Congress to give the CFTC the necessary tools to effectively regulate the futures and swaps markets.

PMAA agrees with Chairman Gensler that if Congress decides to exempt end-users from mandatory clearing, exemptions should be narrowly defined to include only bona fide hedgers that use swaps to manage actual business risks. This will ensure that investment banks and other financial entities are unable to by-pass position limits, clearing and mandatory exchange traded requirements which will mitigate excessive speculation in commodities. Currently, the House Agriculture and Financial Services Committees and the Senate Banking Committee are working on derivatives reform bills.

Some witnesses said that their businesses need to be exempted from clearing requirements because it would impair their ability to hedge their risk and raise costs due to higher margin calls if they were required to clear their trades. However, Gensler disagreed arguing that end-users could post margin through credit arrangements (non-cash collateral) with their banks. Gensler stated that many large corporations currently have credit arrangements with their banks today. Swaps dealers already charge high fees through OTC swaps and because there is no transparency, we really don't know how much the largest swap institutions are charging end-users to manage their risk through customized derivatives. "There is no such thing as a free lunch," Gensler stated.

Chairwoman Lincoln and Ranking Member Saxby Chambliss (R-GA) intend to write derivatives legislation which strikes the right balance to exempt bona fide end-users from clearing requirements while capturing those entities that are not bona-fide hedgers. The Senate Agriculture Committee will hold another financial reform hearing after the Thanksgiving recess and will have U.S. Treasury Secretary Timothy Geithner as the star witness.

HOUSE MULLS ESTATE TAX PROPOSALS

On Wednesday, House Majority Leader Steny Hoyer (D-MD) tried to persuade House Ways and Means Committee members to back a permanent solution to the estate tax by making the tax retain its 2009 limit of a 45 percent rate and \$3.5 million exemption. The estate tax is scheduled to be repealed in 2010 unless Hoyer and Rangel agree on a one-year patch which will give lawmakers time to find a permanent fix. Hoyer's proposal mirrors the Obama Administration's budget and the Democratic budget resolution. However, Ways and Means Committee members balked at Hoyer's proposal and said the best approach was to pass a one-year extension of current law.

The one-year patch sets the debate for 2010 on this controversial measure which the minority party calls the "death tax." No decisions have been made by House Ways and Means Committee Chairman Charles Rangel (D-NY). If Congress doesn't act on the estate tax before 2011, the tax will rise to 55 percent and the exemption will drop to \$1 million.

PLAN TO TAX OIL SPECULATORS DISCUSSED IN HOUSE

House Majority Leader Steny Hoyer (D-MD) said this week that a transaction tax on securities, futures and swaps is still under consideration to make Wall Street pay more of the economic recovery effort. Congressman Peter DeFazio (D-OR) and Rep. Michael Arcuri (D-NY) are circulating a plan that could raise \$150 billion annually through a 0.25 percent tax on securities trades and a 0.02 percent tax on futures and swaps.

Earlier this year, DeFazio introduced a proposal to tax oil speculators in order to raise nearly \$190 billion to fund a \$450 billion highway spending bill. The plan is to tax crude oil futures at 0.02 percent and the premium of a crude oil option at 0.5 percent.

HIGHWAY BILL'S FATE UP IN THE AIR

Senate Environment and Public Works (EPW) Committee Chairwoman Barbara Boxer (D-CA) urged the Obama Administration to step in to end a stalemate between competing House and Senate proposals to reauthorize the highway spending bill. Currently, the highway bill which provides federal funding for our nation's highways and transit systems has continued under two continuing resolutions. Boxer, along with EPW Ranking Member James Inhofe (R-OK), is pushing for a six month extension that would continue current federal funding until June 2010. This would allow House and Senate leaders time to find a way to pay for the expansion of the highway bill. Senate Finance Committee Chairman Max Baucus (D-MT) is also backing a six month extension. Boxer has indicated that once a six month extension is cleared, she plans on having the EPW Committee work on a six year reauthorization and hopes to have it cleared by next summer.

However, House Transportation Committee Chairman James Oberstar (D-MN) has stood his ground against the Obama Administration's initial proposal (18 month extension of current law). Oberstar is working on a six-year, \$500 billion proposal and is reluctant to go along with the Senate's six month extension. At this time, no lawmakers are publically considering the idea of a gasoline tax hike to fund the expansion of the highway spending bill. The Obama Administration has repeatedly said that a gasoline tax hike during a recession is a bad proposal. Most lawmakers agree with Obama's position on a gasoline tax hike, most notably Boxer.

PMAA will continue to monitor the latest developments on the highway reauthorization efforts.

2010 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2010 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 16-18, 2010.

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2010

June 8-10, 2010 – MPMCSA Convention – Billings Hotel and Convention Center – Billings, Montana

June 22-24, 2010 – WOMA Convention – Suncadia Lodge – Cle Elum, Washington

August 4-6, 2010 – IPM&CSA Convention – Schweitzer Mountain Resort – Sandpoint, Idaho

August 31-September 1, 2010 – NMPMA Convention – TBA

September 22-24, 2010 – UPMRA Convention – Park City Marriott – Park City, Utah

Petro Pete: "The economy is so bad... that CEO's are now playing miniature golf."

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