

December 31, 2009

Visit us online at www.wpma.com

WP-12-31-09

ETHANOL GROUPS CHALLENGE CALIFORNIA LCFS RULE

Last week Growth Energy and the Renewable Fuels Association (RFA) challenged California's Low Carbon Fuel Standard (LCFS) rule in a California federal district court. The trade associations argued that the rule violated the Supremacy clause in the U.S. Constitution because it would interfere with 2007 federal law that requires the U.S. to blend 36 billion gallons of ethanol into the national gasoline supply.

Ethanol trade groups like Growth Energy and the RFA have long complained that the California LCFS rule is unfair to corn-based ethanol because certain carbon emission calculations are attributed to the production of corn-based ethanol.

The California Air Resources Board said they have not seen the suit and wouldn't comment on it but did express confidence that the LCFS rule is constitutional.

ESTATE TAX REPEAL EFFECTIVE FOR 2010

Effective January 1, 2010, the estate tax is repealed. Effective January 1, 2011 the estate tax is automatically restored. The top marginal estate tax rate will be 55 percent. The individual exemption amount will be one million dollar of assets.

To understand the implications of the repeal and the operation of the exemption when there is an estate tax, two terms must be understood – "stepped-up" basis and "carryover" basis. Basis generally means a taxpayer's investment in property, with certain adjustments required after acquisition. In the case of many long-time family businesses, the basis of the business as an asset is modest or negligible, since many started literally from scratch.

Under the estate tax system in place through 2009 (and which will be restored in 2011) the heirs received the assets of the deceased taxpayer at a stepped-up basis. The basis of property passing from a decedent's estate generally is the fair market value on the date of the decedent's death (or, if the alternate valuation date is elected, the earlier of six months after the decedent's death or the date the property is sold or distributed by the estate. The advantage of stepped-up basis is, if the assets are later sold, any tax (most often a capital gains tax, but could be income tax depending on the nature of the asset) due is only on the appreciation in the assets since the heirs received the property from the estate.

A carryover basis means the heirs hold the assets at their original value or cost. Thus, any later sale would generate a tax, most often a capital gains tax, on the entire appreciation in the value of the assets.

If a taxpayer dies in 2010, the heirs will receive the assets under a modified carryover basis system. Under these rules, each decedent's estate generally is permitted to increase the basis of assets transferred by \$1.3 million. The \$1.3 million amount is increased by the amount of unused capital losses, net operating losses, and certain "built-in" losses of the decedent. In addition, the basis of property transferred to a surviving spouse may be increased by an additional \$3 million. Thus, the basis of property transferred to a surviving spouse may be increased by at least \$4.3 million. The remainder of the assets would be received by the heirs with their original basis.

The Small Business Council of America (SBCA) has created an example describing the impact of the repeal versus an estate tax with a \$3.5 million exemption, which was in place in 2009.

"Assume there is a small business owner who has \$3.5 million of assets and no surviving spouse.

"Under total repeal: \$1.3 million of the assets receive a step-up in basis to the fair market value of those assets at date of death. The remaining \$2.2 million of assets will have the basis that the decedent had in those assets.

"As an aside, imagine if the decedent were an 85 year old man who acquired many of these assets more than 40 years ago... how anyone is even going to be able to figure out the carry over basis of those assets is beyond us. The burden is on the heirs to prove any basis, and many will fail to have enough records, resulting in a zero basis.

"Now when the heirs of this decedent sell this \$2.2 million of assets, they will be subject to tax on the difference between the then fair market value of the assets and any basis they can prove the decedent had in those assets. For example, let's assume that the heirs are able to prove that the carry-over basis in the assets is \$1 million - then the heirs will be taxed on \$1.2 million (assuming the fair market value of the assets was still \$2.2 million).

"With a \$3.5 million exemption: All \$3.5 million of assets receive a step-up in basis to the \$3.5 million level (this is the fair market value of his assets as of his passing). Now when the heirs sell any of these assets (assuming the fair market value of the assets was still \$3.5 million), there would be no income tax and no estate tax.

"Thus, a single person with assets greater than \$1.3 million up to \$3.5 million is better off under the estate law as it stood in 2009 and is in a worse tax position under repeal of the estate tax. Similarly, a decedent who is married with assets greater than \$4.3 million up to \$7 million does better under the law as it stood in 2009 than he/she would under total repeal."

It is likely that the heirs are probably worse off in 2011 and beyond. They will receive the assets with a stepped-up basis but only one million dollars of the assets would be exempt from the estate tax, and top marginal estate tax rate will be 55 percent.

Lend a Hand to Fight Credit/Debit Card Swipe Fees

Put a petition in your stores today! For more details go to: www.nacsonline.com/fightswipefees



WPMA and NACS are asking members to help fight swipe fees and support our legislative effort by engaging your customers and having them sign a petition supporting this effort.

Retailer's store-level petition drive will educate and collect signatures from customers in support of the industry's legislative efforts. The petition will urge Congress to pass credit card reform legislation that will provide relief from unfair credit and debit card swipe fees. Visit www.wpma.com and click on the "Help Fight Swipe Fees" link in the lower right hand corner of the WPMA home page to order your petition kit with return petition envelope today, every signature counts! If you need additional information please contact Jan or Jamie at the WPMA office at 801-263-9762.

Timeline is as follows: • **December 15, 2009 – January 15, 2010:** Collect consumer signatures for one month.

- **January 16, 2010:** Remove petition kits from stores; assemble materials for delivery to NACS.
- **February 15, 2010:** Deadline for delivery of completed petitions to NACS.

WPMA would like to thank you in advance for all of your help on this endeavor. Our goal is to be able to present over 10 million signatures to Congress in February.

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 – Embassy Suites, Albuquerque, New Mexico

September 8-10, 2010 – UPMRA Convention – Park City Marriott – Park City, Utah

Petro Pete: "New Year's Day: Now is the accepted time to make your regular annual good resolutions. Next week you can begin paving hell with them as usual. Mark Twain."

© 2009 Western Petroleum Marketers Association

All rights reserved. No part of this work may be reproduced or copied in any form or by any means - graphic, electronic, or mechanical, including photocopying, recording, or otherwise. The information herein is also intended for the sole purpose of members of the Western Petroleum Marketers Association (WPMA). Any other use is strictly prohibited without the express written consent of the WPMA.

If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.