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**U.S. SUPREME COURT ACCEPTS REVIEW OF WASHINGTON STATE TRIBAL FUEL TAX CASE**

The nation's highest court has agreed to consider whether Yakama Nation gas station owners are exempt from state gas taxes on the reservation. On Monday, June 25th the U.S. Supreme Court decided to review the case after being recommended to do so by the office of the U.S. Solicitor General in May.

At issue is whether Yakama tribal members operating gas stations on tribal land are subject to the state's gas tax when bringing wholesale fuel onto the reservation. Specifically, certain tribal members using export licenses issued by the tribe, have been purchasing wholesale gas from an out of state distributor, selling it to customers on the Yakama reservation, much of whom are non-tribal members seeking to avoid the state's motor vehicle fuel tax.

Previously, in what the fuel supplier industry considers to be bizarre decisions, the Yakima County Superior Court and the state Supreme Court ruled in favor of a specific tribal member, citing a provision in the Yakama Treaty of 1855 promising that tribal members would have free access to all roads and highways and also allowing them to freely bring goods to market.

In a joint statement, the state Attorney General's Office and the state Department of Licensing said the previous interpretations of the treaty are too broad and unfair.

"The Ninth Circuit has held that the Yakama Treaty exempts Yakama members from charges imposed specifically for using the highway, but not from taxes or charges like the ones at issue here, which would apply no matter how [tribal members] transported this fuel into Washington," the joint statement said.

The Washington Oil Marketers Association (WOMA) joined forces with the state, submitting an Amicus ("friend of the court") Brief urging the Court to accept review of the case. The state Attorney General's office has credited WOMA's brief as being influential in the Court's acceptance as its arguments were cited extensively in the U.S. Solicitor General's recommendation that the Court accept review.

This amounts to a huge victory for the industry at this point as the Supreme Court receives about 8,000 petitions to review decisions each year, but only agrees to hear a fraction of them — about 80 cases a year.

The state Attorney General's Office expects the U.S. Supreme Court to hear the gas tax case sometime in October or November.

**SCOTT PRUITT RESIGNS AS EPA ADMINISTRATOR*****Andrew Wheeler to Succeed Pruitt as Acting Administrator of EPA***

Yesterday, President Donald Trump tweeted that EPA Administrator Scott Pruitt had resigned. Once regarded as one of the most effective Cabinet members in advancing Trump's policies, Pruitt's resignation follows months of unceasing scandals involving his first-class travels, spending, and seeking favors from industry lobbyists.

Andrew Wheeler will now be acting administrator of the EPA. Wheeler is expected to take the same positions on issues as Scott Pruitt, therefore, serving as a valued asset for the President. Earlier in his career Wheeler worked as an attorney and lobbyist at Faegre Baker Daniels, and as a top aide to Senator Jim Inhofe (R-OK).

**REMINDER: SPECIAL CLAIM PROCEDURES FOR 2017 BIODIESEL BLENDER CREDIT**

PMAA Contact: Mark S. Morgan Regulatory Counsel [mmorgan@pmaa.org](mailto:mmorgan@pmaa.org)

Just a reminder that the period for filing the special one-time refund of the \$1.00 per gallon biodiesel blenders tax credit claims (IRS Notice 2018-21) ends on September 29, 2018. The credit was reinstated by Congress retroactively for calendar year 2017 under the Bipartisan Budget Act of 2018. While the biodiesel blender credit was not reauthorized for 2018, PMAA continues to lobby for reauthorization for calendar year 2018 and beyond. IRS Notice 2018-21 also sets forth procedures to make one-time retroactive claims for alternative fuel credit and the alternative fuel mixture credits earned during calendar year 2017.

**SUPREME COURT ALLOWS STATES TO REQUIRE OUT OF STATE VENDORS TO COLLECT AND REMIT SALES TAX**

Late last month, the Supreme Court released its decision in the case of South Dakota v. Wayfair, Inc. The Court overturned its prior 1992 physical presence ruling which means states can require out of state vendors to collect and remit sales taxes on sales to individuals located in the state. Under the new ruling, states will be able to require businesses that have a "substantial nexus" with the state to collect and remit sales tax. While the implications are yet unknown, this is a big commercial shift that is relevant for small businesses of all types.

What does it mean for a business to have a substantial nexus with a state such that the state can impose the tax collection and remission burden? The Supreme Court concluded that the South Dakota statute properly addresses the substantial nexus issue as the law only applied to sellers delivering \$100,000 in goods and services or 200 transactions annually. Louisiana has already enacted a law like South Dakota's in anticipation of South Dakota prevailing in the case and it is expected that other states will do the same.

The prior rule was that states could only hold businesses with a physical presence liable for collecting and remitting sales taxes. Therefore the big online retailers could not be required to collect and remit states sales taxes. In overturning that rule, the Court reasoned that the rule had been established to prevent state tax laws from burdening interstate commerce, but had resulted in giving out of state sellers an advantage over local businesses and that the rule no longer reflected the reality of the global online economy.

Depending on how each state defines which sellers will be subject to the new collection and remission laws, small businesses that rely on online sales may face challenges that the technological solutions may not move quickly enough to resolve. There are already efforts underway to enact requirements setting limits as to which businesses states could apply any new sales tax collection laws.

### **CLARIFICATION OF QUALIFIED BUSINESS INCOME DEDUCTION A TOP PRIORITY**

Acting IRS Commissioner David Kautter recently stated that the interpretation of Section 199A has been identified as a top priority, and proposed rules for notice and comment will be released in the next few weeks. Section 199A provides a new 20 percent deduction on "qualified business income" under certain circumstances for pass-through businesses. Although it will be a while before final rules are issued, the proposed rules should give businesses a sense of how the IRS plans to interpret and apply certain parts of 199A.

### **FMCSA DENIES OOIDA PETITION FOR SMALL CARRIER REPRIEVE FROM ELD COMPLIANCE**

On Tuesday the Owner-Operator Independent Drivers Association (OOIDA) announced that the Federal Motor Carrier Safety Administration (FMCSA) denied their petition for a reprieve from ELD compliance for small carriers with clean safety records. Specifically, OOIDA's petition called for businesses with less than \$27.5 million in annual revenue, be allowed to continue using paper logs to record duty status if they had no at-fault crashes and did not have a safety rating of Unsatisfactory. Once FMCSA publishes its decision in the Federal Register, we will know why the agency denied OOIDA's petition.

OOIDA's November filing for an exemption came after the group unsuccessfully fought the mandate in court. During 2016, the association filed a lawsuit against FMCSA seeking to overturn the mandate, but the 7th Circuit Court of Appeals in Chicago ruled in favor of FMCSA. OOIDA has since appealed the decision to the U.S. Supreme Court, but the appeal was denied.

### **EPA TO HOLD PUBLIC HEARING ON PROPOSED RFS RVOS**

This week, the EPA announced that it will hold a public hearing on July 18 at 9:00 a.m. in Ypsilanti, Michigan on its proposed rule for the RFS Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020.

PMAA continues to be concerned that small business petroleum marketers will be placed in a precarious situation if E15 starts to take hold because of the potential economic impacts of adding E15 including the costs associated with existing UST system incompatibility.

In June, the U.S. EPA issued a proposed rulemaking setting obligated blending volumes for the Renewable Fuels Standard (RFS) for 2019 and the biodiesel standard for 2020. The proposal calls for a three percent increase in the overall blending volumes which has sparked criticism from both the oil and ethanol industries.

The EPA is proposing to increase total renewable fuel volume by 590 million gallons from 19.29 billion gallons in 2018 to 19.88 billion gallons for 2019. Cellulosic biofuel will increase by 93 million gallons from 288 million gallons in 2018 to a proposed 381 million gallons in 2019. Under the proposed rule, advanced biofuels will increase from 4.29 billion gallons in 2018 to 4.88 billion gallons in 2019, an increase of 590 million gallons. Conventional biofuels, including corn ethanol, will remain at the 15 billion-gallon statutory maximum set by Congress under the RFS. The rulemaking also proposes to set the 2020 renewable fuel volume for biomass-based diesel at 2.43 billion gallons, up 330 million gallons when compared with 2019 and 2018 2.1 billion gallons requirement.

Overall, the proposed 2019 renewable fuel volumes are a mixed bag for petroleum marketers. The good news is that the rule did not propose to force large refiners to make up for the lost 1.5 billion gallons of obligated blending volume lost in 2018 due to blending waivers issued by the EPA to small refineries based on financial hardship. Carrying those gallons over to large refiner obligated blending volumes for 2019 would have caused the value of RIN blending credits to soar, leading to higher prices at the pump. The corn ethanol lobby is not pleased with EPA's move which indirectly reduces the corn ethanol mandate.

For petroleum marketers, the corn ethanol mandate continues to put marketers in a precarious situation given UST system

incompatibility with E10 plus blends with regard to the seals, glues, gaskets and other components that would force them to break concrete to sell higher ethanol blends. PMAA plans to submit comments for the July 18 hearing.

### EPA REPORT ARGUES THAT BIOFUEL PRODUCTION DAMAGES ENVIRONMENT

According to a new EPA report sent to Congress late last week, over reliance on biofuels to satisfy biofuel blending requirements under the RFS could damage the environment.

Specifically, the report said that biofuel production has contributed to a largescale conversion of domestic and international land use, which in turn, leads to reduced water quality and availability, loss of biodiversity, and worsening air quality. The report concluded that that the negative environmental impacts from corn ethanol production continue because there is no viable alternative biofuel to take its place.

Originally, lawmakers anticipated that an alternative biofuel would develop to offset the known adverse environmental impact of corn ethanol production. When biofuel alternatives failed to materialize, more land was converted for corn ethanol production. More ethanol production means more environmental harm from clearing land, planting, treating and harvesting crops, refining feedstock and final blending and distribution to the end user. The report recommended additional study of land use conversion attributed to corn ethanol production, improvements to crop production efficiency and sustainability, using an ecosystem approach to evaluate the environmental impacts of biofuel production and development of best management practices to promote soil conservation and sustainability, and reduce agricultural run-off into watershed areas.

### PLAN TO ATTEND THE 2019 WPMAEXPO



Mark your calendars for February 19-21, 2019. Make plans now to attend the 2019 WPMAEXPO. It will be held once again at the Mirage in Las Vegas, Nevada.

### MARK YOUR CALENDARS FOR UPCOMING EVENTS

**August 8-10, 2018** – Idaho (IPM&CSA) Convention – Coeur d’Alene Resort – Coeur d’Alene, Idaho  
**August 20-22, 2018** – New Mexico (NMPMA) Convention – Sandia Resort & Casino, Albuquerque, NM  
**September 12-14, 2018** – Utah (UPMRA) Convention – Doubletree by Hilton, Park City, UT

**February 19-21, 2019** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, Nevada  
**May 2-3, 2019** – Nevada (NPM&CSA) – Big Dogs – Las Vegas, Nevada  
**August 5-7, 2019** – Idaho (IPM&CSA) – Convention – Sun Valley Resort – Sun Valley, Idaho

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**Petro Pete: “If someone says you’re being condescending when you’re not, it’s really hard to find a way to tell them they’re using the word incorrectly.”**