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### CONGRESSIONAL UPDATE

House and Senate Democrats continue negotiating a way forward for the \$1 trillion bipartisan Infrastructure Investment and Jobs Act (IIJA) and a partisan \$3.5 trillion reconciliation package. On Saturday, September 25, the House Budget Committee will combine the House committees' individual portions of the reconciliation package – including the tax provisions – into one package. This package as it currently stands has no chance of passing the Senate, as Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) have reiterated their opposition to the size and scope of the current House version. House Speaker Nancy Pelosi (D-CA) has pledged to not hold a vote in the House before an agreement can be reached with Senate, which would not pass the House's current package without significant changes.

**[CLICK HERE](#) to act now – we need you to contact your Congressional members and urge them to oppose the House reconciliation package.**

Senators will have their own opportunity to markup and submit amendments for their version of the reconciliation package. In August, Senator Deb Fischer (R-NE) submitted an amendment prohibiting people making more than \$100,000 a year from claiming EV tax credits and to end tax credits for EVs that cost more than \$40,000. Both Senators Manchin and Sinema supported the amendment.

As a reminder, government funding expires on September 30. Since Congress has not finalized a FY 22 spending package, Congress must pass a Continuing Resolution (CR) to temporarily keep government open. Democrats are attempting to combine a CR with a debt ceiling increase, which Senate Republicans have pledged to oppose. Stay tuned!

### EPA SET TO ADOPT SIGNIFICANT CUTS IN ANNUAL ETHANOL BLENDING MANDATES UNDER THE RFS

According to Reuters news wire service, the Biden administration is set to move forward with significant cuts to the annual blending mandates under the RFS. If true, it would mark a significant victory for EMA and the energy marketers it represents. According to documents obtained by Reuters, the Environmental Protection Agency (EPA) will reduce blending mandates for 2020 and 2021 to about 17.1 billion gallons and 18.6 billion gallons, respectively. These levels would be lower than the 20.1 billion gallons that had been finalized for 2020 before the coronavirus pandemic. The agency is also expected to set the level for 2022 at about 20.8 billion gallons, the documents showed. The EPA is setting the 2020 and 2021 mandates retroactively. Ethanol would take the biggest hit. Levels for conventional renewable fuel, which includes ethanol, would drop from 15 billion gallons to about 12.5 billion gallons in 2020, 13.5 billion gallons in 2021 and 14.1 billion gallons in 2022.

This is good news for energy marketers for many reasons. First, lowering blending requirements below the E15 blend wall will allow marketers to choose whether to sell E15 rather than mandating its sale through adoption of blending obligations that do not reflect actual consumer demand. Second, it will relieve pressure on marketers to make costly E15 upgrades to their UST systems. Third, it will prevent the bankruptcy of state UST tank funds by avoiding a significant increase in claims for UST system leaks caused by E15. Finally, reducing the blending mandate below the blend wall will reduce the value of RINs, which have soared to record highs this year, and are used to discount prices at the pump that most marketers cannot compete with.

If adopted, the lower RFS blending mandates would be a major victory for EMA which has advocated consistently over the years before Congress and the EPA for reduced blending mandates. It appears that EPA is finally agreeing with what EMA has been saying all along; RFS blending obligations must be based on actual consumer demand for gasoline and not on wildly inaccurate statutory demand estimates formulated back in 2005. Tying blending obligations to actual demand for gasoline prevents E15 from being forced onto the marketplace and preserves marketer choice over the blends they wish to sell.

The EPA is expected to release the blending obligations for 2020, 2021 and 2022 within the next few days. EMA will report further once the EPA makes the blending obligation announcement.

## **IRS REMINDS BUSINESSES TO CORRECTLY IDENTIFY WORKERS AS EMPLOYEES OR INDEPENDENT CONTRACTORS**

The Internal Revenue Service (IRS) issued a reminder to business owners of the importance of correctly determining whether individuals providing services are employees or independent contractors. According to IRS an employee is generally considered to be anyone who performs services, if the business can control what will be done and how it will be done. What matters is that the business has the right to control the details of how the worker's services are performed. Independent contractors are normally people in an independent trade, business, or profession in which they offer their services to the public. Doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers are generally independent contractors.

### *Independent contractor vs. employee*

Whether a worker is an independent contractor, or an employee depends on the relationship between the worker and the business. Generally, there are three categories to examine:

**Behavioral Control** - does the company control or have the right to control what the worker does and how the worker does the job?

### *Financial control*

Does the business direct or control the financial and business aspects of the worker's job? Are the business aspects of the worker's job controlled by the payer? (Things like how the worker is paid, are expenses reimbursed, who provides tools/supplies, etc.) **Relationship of the Parties** - are there written contracts or employee type benefits (i.e., pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

### *Misclassified worker*

Misclassifying workers as independent contractors adversely affects employees because the employer's share of taxes is not paid, and the employee's share is not withheld. If a business misclassified an employee without a reasonable basis, it could be held liable for employment taxes for that worker. Generally, an employer must withhold and pay income taxes, Social Security and Medicare taxes, as well as unemployment taxes. Workers who believe they have been improperly classified as independent contractors can use IRS Form 8919, Uncollected Social Security and Medicare Tax on Wages (.pdf) to figure and report their share of uncollected Social Security and Medicare taxes due on their compensation.

### *Voluntary Classification Settlement Program*

The Voluntary Classification Settlement Program (VCSP) is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. Taxpayers must meet certain eligibility requirements, apply by filing Form 8952, Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.

### *Who is self-employed?*

Generally, someone is self-employed if any of the following apply to them:

They carry on a trade or business as a sole proprietor or an independent contractor.

They are a member of a partnership that carries on a trade or business.

They are otherwise in business for themselves (including a part-time business).

Self-employed individuals generally are required to file an annual tax return and pay estimated tax quarterly. They generally must pay self-employment tax (Social Security and Medicare tax) as well as income tax.

## **EMA OPPOSES PROPOSALS TO TRANSFER MORE BANKING DATA TO THE IRS**

Under pressure from House moderates, President Joe Biden's plan to require financial institutions to report account flows to the IRS in a bid to improve tax compliance will likely be set at a threshold higher than the \$600 proposed. Some estimates are focused on raising the threshold to \$10,000.

Recently, EMA joined 42 other associations in a letter to Senate and House Leadership in opposition to any proposal that

would require financial institutions to report to the IRS on transactions in business and personal accounts. Click [here](#) to read the letter.

### **MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!**

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at [janr@wpma.com](mailto:janr@wpma.com), or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1<sup>st</sup>. Later submissions will be considered for the Spring issue.

### **MARK YOUR CALENDARS FOR UPCOMING EVENTS**

**December 2, 2021** – Washington (WIED) Holiday Party – Little Creek Resort & Casino – Shelton, WA

**December 14, 2021** – Oregon (OFA) Holiday Event – Portland Golf Club – Portland, OR

**February 22-24, 2022** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

**May 5-6, 2022** – Nevada (NPM&CSA) Big Dogs – Las Vegas, NV

**June 7-8, 2022** – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Fairmont, MT

**June 20-22, 2022** – Washington (WIED) Convention – Suncadia Resort – Cle Elum, WA

**July 17-19, 2022** – Oregon (OFA) Annual Convention – Sunriver Resort – Sunriver, OR

**August 3-5, 2022** – Idaho (IPM&CSA) Convention – Coeur d'Alene Resort – Coeur d'Alene, ID

**August 22-24, 2022** – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM

**September 14-16, 2022** – Utah (UPMRA) Convention – Sheraton Park City Hotel – Park City, UT

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**Petro Pete: “The rotation of the Earth really makes my day.”**

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