



NAEDA Update

NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION e-newsletter

Thursday, December 30, 2010

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Legislative & Regulatory News

UPDATED: NAEDA Special Report: Tax bill provides benefits

The Small Business Jobs Act of 2010 (Jobs Act) changes rules regarding depreciation and deduction of business property. Some changes are retroactive to the beginning of 2010. The new rules have numerous provisions that affect equipment dealers and their customers. Download the [NAEDA Special Report](#).

Estate planning alert: Charitable IRA rollover, gift tax credit, estate tax, more

President Obama has signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The key highlights of that act affecting estate planning are as follows:

Charitable IRA rollover extended – A donor older than 70½ may make charitable contributions of up to \$100,000 per year directly from the donor's traditional IRA to certain qualified charities. This is available for contributions made by a donor in 2010 or 2011. Due to the late enactment of this law, there is a special rule for January 2011. The donor may treat those as occurring either in 2010 or 2011. This ability to direct IRA distributions directly to a charity sunsets on Dec. 31, 2011.

Gift tax credit increased – Effective for 2011 and 2012 only, the gift tax credit increases from \$3.5 million to \$5 million. If you wish to make a substantial lifetime gift, it would be best to make that gift in 2011 or 2012. After 2012, the gift tax credit is scheduled to decrease to \$1 million.

Estate tax credit and GST tax exemption increased – The estate tax credit or exemption has been increased from \$3.5 million per person in 2009 to \$5 million in 2011. This amount may pass tax-free to persons other than your spouse at your death. The Generation-Skipping Transfer (GST) tax exemption that applies to gifts or bequests to grandchildren has also been increased to \$5 million. Both of these increases sunset Dec. 31, 2012, at which point the estate tax credit is scheduled to decrease to \$1 million and the GST tax exemption is set to decrease to about \$1.4 million. Portability of the unified credit between spouses may be possible in a particular situation, but is subject to limitations.

The new act contains favorable provisions for the next two years which will provide planning opportunities for many individuals. Please contact your estate planning advisor at Seigfried, Bingham, Levy, Selzer & Gee, P.C. (Seigfried Bingham), NAEDA's legal firm.

Source: Seigfried, Bingham, Levy, Selzer & Gee, P.C.'s Estate Planning Alert – December 2010

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Top 11 legislative issues for 2011

www.ncsl.org/?tabid=21929

Cell phone ban regulations proposed

The Federal Motor Carrier Safety Administration (FMCSA) has proposed regulations to restrict the use of hand-held mobile telephones, including hand-held cell phones, by drivers of commercial motor vehicles (CMVs) while operating in interstate commerce.

The agency proposed new driver disqualification sanctions for interstate drivers of CMVs who fail to comply with this Federal restriction and new driver disqualification sanctions for commercial driver's license (CDL) holders who have multiple convictions for violating a state or local law or ordinance on motor vehicle traffic control that restricts the use of handheld mobile telephones.

Additionally, interstate motor carriers would be prohibited from requiring or allowing drivers of CMVs to engage in the use of a hand-held mobile telephone while operating in interstate commerce.

This rulemaking is designed to improve safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of CMVs. FMCSA is accepting both initial comments and reply comments in response to this Notice of Proposed Rulemaking (NPRM).

Initial comments are due on or before Feb. 22, 2011 and reply comments on or before March 21, 2011. Initial comments can address any issue raised in the NPRM and the background documents in the docket (e.g., regulatory evaluation, studies, environmental assessment, etc.).

Reply comments must address only matters raised in initial comments and not present new arguments, contentions, or factual material that is not responsive to the initial comments. NAEDA is reviewing the new proposed regulations with regard to how they may affect dealers who use CMVs.

New National Labor Relations Board regulations announced

The National Labor Relations Board and Department of Labor have announced several new initiatives. The NLRB released a Notice of Proposed Rulemaking (NPRM), which would require employers subject to the National Labor Relations Act (NLRA) to post a notice in the workplace informing employees of their rights under the NLRA.

The board believes that many employees protected by the NLRA are unaware of their rights under the statute. The intended effects of this action are to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions. The proposed rule establishes the size, form, and content of the notice, and sets forth provisions regarding sanctions and remedies that may be imposed if an employer fails to comply with its obligations under the rule.

Under the NPRM, employers would face various sanctions for failing to post the notice, including:

- 1) being charged with unfair labor practice
- 2) having the time limits for filing of other unfair labor practice charges against the employer extended

CEO Blog

"What have you done for me lately?"

December 2010

"What have you done for me lately?" is a familiar question and one that member dealers are encouraged to ask NAEDA and its state, regional or provincial association.

I can respond to the question that in 2010 we've done a lot in respect to both manufacturer and government relations on behalf of U.S. and Canadian dealers.

There were days in 2010 where it seemed as though every manufacturer on the planet woke up one morning and said, "Let's prepare a new dealer agreement or finance agreement for our dealers to sign!" During the last 12 months, NAEDA, associated affiliates and our legal counsel reviewed and analyzed no less than 15 such agreements. Needless to say, it was a great year for our attorneys! In nearly every instance we were able to discuss the agreements with the various manufacturers and reach an understanding about how to make the agreements more balanced and fair to both parties. There were even several agreements where the manufacturer requested and received our input before mailing the initial agreement to dealers. In these instances, the process went smoother and yielded better results for both dealers and the manufacturer due to our involvement.

Collectively, NAEDA, your association and our legal counsel also worked on special projects to improve manufacturer's understanding of their dealers' concerns. For example, our warranty survey, to which many of you responded, provided the NAEDA Industry Relations Task Force (IRTF) with valuable dealer perspectives about warranty reimbursement policies and other matters that it shared during manufacturer/IRTF meetings.

We also worked in collaboration with AEM, AED, FEMA, and ARA to produce a brochure to answer frequently asked questions regarding the new Tier IV emissions regulations which take effect Jan. 1, 2011. Members of participating associations and the general industry press received the information. The media has referenced the brochure frequently ever since. Similarly, NAEDA and affiliates produced a brochure to assist neophyte manufacturers with their quest to tap into North American equipment markets. This brochure will be widely distributed over the coming months. It will assist new entrants with how to establish a dealer network, write contract language, work with dealer laws in the various states and provinces, etc. We had many requests for this type of information and feel it will help both manufacturers and dealers.

Your association has also worked diligently this year on many legislative and regulatory issues faced by you, the dealer. One example was our collective work to extend the U.S. bonus depreciation provisions and to get the depreciation issue in front of the proper ministerial decision makers in Canada. We were successful on both fronts. In addition, we were successful in extending the lower depreciation provision on agricultural equipment from seven years down to five years in the United States.

I can go on and on about the accomplishments of NAEDA's affiliates and NAEDA in 2010 – it was a banner year for helping dealers succeed. It is also worthy of noting that in this process, hundreds of thousands of dollars were spent on your behalf so all dealers could benefit from the results.

You can often read about these accomplishments and more on our new and much improved Web site (www.naeda.com) and in our recently improved bi-weekly newsletter, NAEDA Update, and in this industry leading magazine.

The point of this column, very simply, is this: Pick any one project or issue worked on by NAEDA and your association over this past year and place a monetary value on it. If

3) having the Board consider the failure to post the notice as evidence of unlawful motive in other unfair labor practice cases. NAEDA is reviewing the proposed regulations which are open for comments for 60 days.

NLRB Acting General Counsel also issued a memorandum announcing a new enforcement policy against employers accused of unlawful conduct during union organizing campaigns. The memorandum instructs regional NLRB attorneys to seek the following remedies in those situations:

- 1) that a management official from the company read or be present when a board official reads a notice announcing that the company violated the employees right to organize and they will not do so again in the future
- 2) grant the union access to the company bulletin board or electronic equivalent, including email or intranet, and a list of employee names and address to facilitate union communication with employees.

The memo also states that in cases where the regional attorneys find the employers' conduct had a particularly severe impact, the regional attorney may look to pursue additional remedies, including: "granting a union access to non-work areas during employees' non-work time; giving a union notice of, and equal time and facilities for the union to respond to, any address made by the company regarding the issue of representation; and affording the union the right to deliver a speech to employees at an appropriate time prior to any Board election."

The new policy would expand the use of what have been traditionally extraordinary or exceptional remedies and, in some cases, introduces new remedies by stretching existing precedent. This builds upon the Acting General Counsel's memorandum announcing the Board would be pursuing more injunctions in cases where it believes the employer violated the law during an organizing campaign.

NAEDA will be monitoring the NLRB's new policy and will keep dealers apprised of further developments on this new enforcement policy.

DOL plans to publish rules on union drive communication costs

The Department of Labor (DOL) has indicated it plans to publish proposed and final rules in June 2011 that will revise reporting requirements for costs related to employer communications to employees during union organizing drives.

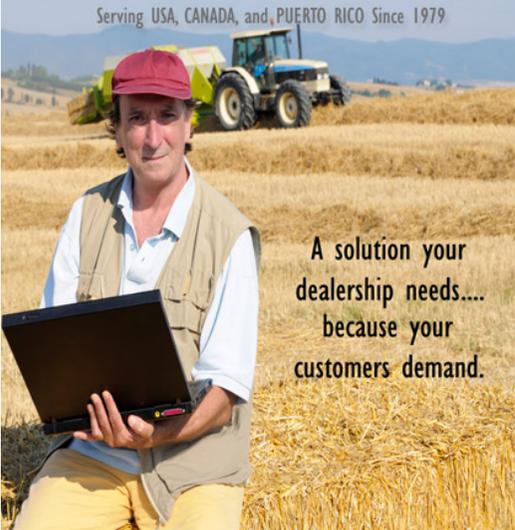
Under current law, employers and consultants are not required to report activities classified as advice. DOL has said it intends to narrow the advice exemption. NAEDA will be watching for these new regulations when issued by DOL.

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Industry & Manufacturing News

LAST CHANCE: Survey: Will 2011 be a banner year or a bust?

Please complete this brief [survey](#) to let NAEDA know how you see 2011 shaping up for your dealership. Your responses will help us provide guidance to all member dealers in the January 2011 *NAEDA Equipment Dealer* magazine feature story, Outlook 2011.

U.S. consumer confidence increases to a six month high

www.bloomberg.com/news/2010-12-23/u-s-consumer-sentiment-climbs-as-michigan-index-reaches-74-5-in-december.html

EDA: Agriculture sales trends, new vs. used 2000-2010

www.edadata.com/IndustryInsight/agriculture.html?contactID=146856408&qwkey=XMDX0CPKBP

Attend McCormick USA's Prospective Dealer Reception at AG CONNECT Expo

You're invited to McCormick USA's [private dealer reception](#) at AG CONNECT Expo in Atlanta from 4:00-6:00 p.m. on Jan. 8, 2011, in B206, a private meeting room overlooking the exhibit hall.

While you are there, meet the McCormick USA team, see McCormick's product lineup, discover McCormick's unique approach to serving dealers, and learn about the company's marketing programs. You can even take a tour of McCormick's corporate offices, tractor assembly operations and service parts warehouse. McCormick USA's headquarters are located in Duluth, Ga., just north of Atlanta.

you do, I think you'll discover that the cost of handling just this one project or issue would more than pay for your dues over a decade. If you use a typical dues level, which includes dues to the affiliate and NAEDA, your investment is only about \$1.20 to \$1.40 per day, yet you receive so much in return. All the travel, legal and labor expenses are spread over thousands of member dealers versus you handling common dealer concerns all on your own.

So next time you think, "What have they done for me lately?", remember this column and think about all that is done every day by NAEDA and your association to help you be a successful dealer. We hope you see that your association membership is a wise investment*... and that's the way I see it.

Happy holidays! See you again in 2011.

PAUL KINDINGER is president/CEO of the North American Equipment Dealers Association. The association provides educational, legal, legislative, and financial services to approximately 5,500 retail agricultural, construction, large property/rural lifestyle, and outdoor power equipment dealers in the United States and Canada.



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About NAEDA Update

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The North American Equipment Dealers Association provides educational, legal, legislative, and financial services to approximately 5,500 retail agricultural, construction, large property/rural lifestyle, and outdoor power equipment dealers in the United States and Canada.

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NAEDA, Association & Program Partner News

Federated acquires American Hardware Mutual Business in selected states

Federated Chairman Al Annexstad noted that the two insurers were affiliated nearly 100 years ago. "Although the companies' operational approaches have differed over the years, there remained similarities in purpose that made this acquisition a logical one for Federated and beneficial to its association clients," he reported.

"We welcome these new policyholders to the Federated culture of quality service and our commitment to providing risk management value. We believe that everyone involved should benefit from this new relationship," he said.

Federated's President – CEO Jeff Fetters recalled that both mutual insurers were created and fostered by trade associations a century ago. "Like many insurers of the time, the two companies focused primarily on serving their association members. Over the years, many of these competing insurers' support for the nation's trade association movement subsided. Federated has remained steadfast in providing both quality insurance services and financial support for these recommending groups of outstanding business people."

Fetters added, "It was nearly 25 years ago that Al Annexstad led Federated's renewed commitment to America's small business people and a resurgence of the company's movement in support of trade associations. Mr. Annexstad recognized the importance of trade associations to the wellbeing of our country and the mutually beneficial role they should play in Federated's business strategy. The number of association and industry groups recommending Federated has grown from 47 to more than 400 under Mr. Annexstad's leadership. This acquisition reconfirms our business direction."

Fetters reported that "the organization continues to follow the strategic business plan developed by Mr. Annexstad after gathering input from the company's Client Advisory Council and its top marketers and underwriters". He cited the company's 700 direct marketers, managers and special representatives, the support of 130 highly trained employees providing loss control, safety and risk management services along with more than 300 claims personnel dedicated exclusively to Federated clients as key to Federated's progress. Fetters lauded American Hardware Mutual as a quality competitor while projecting that its former policyholders will value Federated's encompassing counsel on insurance and risk management.

Federated is rated A+ (Superior) by A.M. Best Company, an independent insurance rating agency. The companies serve the Property Casualty, Health and Life needs of America's select trade groups. Federated's home office is located in Owatonna, Minn. with a regional office in Phoenix, Arizona and service offices throughout the continental United States.

KPA: 2011 new minimum wage rates

While the federal minimum wage rate is unchanged (\$7.25) a number of states and municipalities have increased their minimum wages (sometimes called living wages) effective Jan. 1, 2011. blog.kpaonline.com/2010/12/2011-new-minimum-wage-rates/

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Canadian News

Prime Minister expected to shuffle cabinet in mid-January

www.vancouversun.com/news/Harper+expected+shuffle+cabinet+January/4038758/story.html

Finance Minister Flaherty reconsiders Canada's budget strategy

www.thestar.com/news/canada/article/911306--flaherty-rethinks-canada-s-budget?bn=1

Consumer safety bill passes Parliament

www.cbc.ca/politics/story/2010/12/14/con-consumer-safety-act.html

Tip of the Month

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- Jan. 13 - [Lawsuits Waiting To Happen](#)
- Jan. 20 - [EPA's New 6H Emission Standards are in place, are you compliant?](#)