



NORTH AMERICAN EQUIPMENT DEALERS ASSOCIATION

Serving Farm, Industrial and Outdoor Power Dealers

1195 Smizer Mill Road • Fenton, Missouri 63026-3480 • Phone: (636) 349-6221 • Fax: (636) 349-5443 • www.naeda.com

2011 Legislative Priorities

112th Congress, 1st Session

IRS 1099 Filing Requirements – With passage of the healthcare legislation, came the onerous requirement for our dealers to file IRS Form 1099 for each business and or service provider that does \$600 worth of business with the dealership. The other requirement in this legislation was the provision to withhold up to 28% of a payment if a taxpayer identification number was not provided at the time of initiating a business transaction. Both these requirements put undue burdens and costs on our dealers. We respectfully request these issues be reviewed by Congress.

Equipment Depreciation – We believe Congress should ask IRS to review their MACRS Depreciation Class Life Systems for 1) farm and ranch equipment, and 2) buildings and contents and recommend a change in the current depreciation class life system. Allowing farmers and ranchers to write off or depreciate equipment over a shorter five-year lifetime versus seven years, will increase their income, help in debt repayments and allow for the timely replacement of equipment, which helps to drive our industry. In addition, faster equipment replacement brings environmental benefits from newer engines, better fuel efficiencies and the latest technology in emission controls.

IRS changes regarding how a dealership's buildings and contents are depreciated should better reflect modern day practices in our industry. Current depreciation schedules spread out the costs of such improvements over too long of a recovery period, which often delays a dealer from making such investments. A depreciation schedule change in the class life system would encourage capital expansion plans for many dealers, provide space to accommodate newer and larger equipment and the diagnostic hardware to service that equipment and help local economies with additional construction and service jobs.

LIFO / Taxes - NAEDA supports tax legislation that: 1) has a balanced approach to taxation through fair and reasonable personal and corporate rates, 2) repeals the estate tax and the alternative minimum tax, and 3) maintains Last In First Out (LIFO) as an acceptable IRS accounting method.

2012 Farm Bill - NAEDA supports the 2008 farm bill and the continuation of the provisions and funding protocols outlined in the legislation until its expiration in 2012. For the 2012 Farm Bill, NAEDA supports legislation that:

- provides for planting flexibility
- provides a safety net for producers and considers extreme weather conditions and trade related issues
- balances the needs of conservation and the needs of land used for production
- considers trade issues
- supports education and research efforts
- provides for rural development activities to include agricultural credit, beginning farmer programs and value-added programs for a renewable bio-economy
- provides for educational programs to assist dealers to hire and retain quality employees in the agriculture and outdoor power equipment industries

NAEDA represents approximately 5,000 retail agricultural, industrial and outdoor power equipment dealerships in the United States and Canada. Collectively, these dealerships represent tens of thousands of owners and company employees. NAEDA is also an association that has 14 affiliate organizations in the United States. These statements are presented on behalf of our members and our United States affiliate associations.



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North American Equipment Dealers Association Regulatory Issues of Concern

1. **Tool Reimbursement Programs** – Our dealers’ service technicians continue to struggle with IRS regulations concerning their ability to recover the costs of their tools through tool reimbursement programs. In August 2005, the IRS issued a ruling that reimbursement programs had to follow the rules of the “accountable plan” with substantiation of the business connection; and then again in the fall of 2008 tightened its rules on reimbursement programs. In 2009, IRS issued a “coordinated issue paper” outlining even more rigid tax parameters. Despite these IRS rulings, we still do not have a clear definitive ruling on what constitutes recharacterization of income nor an outline of what constitutes an “acceptable plan.” Our dealers and their service technicians feel they have been “targeted” repeatedly by the IRS to deny them of the ability to recover their tool costs as other employees are allowed to do. We ask Congress to review IRS activity in this area and remove the obstacles for tool reimbursements by service technicians.
2. **Credit and Debit Card Swipe Fees** – Congress needs to exercise oversight on the implementation of these fees as allowed under the Dodd-Frank Wall Street Reform Act of 2010. Our dealers feel that the current fees being charged, particularly for debit card transactions, are out of proportion to the risks involved in credit card transactions.
3. **Trucking Regulations** – The Federal Motor Carrier Safety Administration’s (FMCSA) proposed new regulations on December 23, 2010 concerning trucking and hours of service (HOS). These proposed regulations are on top of the new CSA 2010 requirements that just became effective on December 13, 2010. The new rules appear to restrict the number of hours a driver can drive consecutively and work with their 14-hour work day and places new restrictions on the 34-hour restart provisions used by drivers to reset their weekly driving allotments. We ask that Congress look at the data used by FMCSA to justify these new regulations and to what extent provisions were made to accommodate smaller businesses like our dealerships. We also ask for a Congressional review on how the hours of service (HOS) exemptions for agriculture have been implemented by FMCSA.

Congress authorized HOS agricultural exemptions in 1995 and intended to address the special needs of the nation’s agricultural industry and its critical timely delivery and transportation of agricultural inputs during peak planting and harvesting seasons as defined by each state. In today’s fast pace of agriculture, parts, repairs and service provided by equipment dealers are critical elements in the success and efficiency of production agriculture and we believe FMCSA regulations should consider an HOS exemption for those inputs in rulemaking considerations.

4. **Tax Withholding on Government Sales** - The Tax Increase Prevention and Reconciliation Act of 2005 requires that payments by governmental entities for goods or services after December 31, 2011, are subject to 3% income tax withholding when payments are made to equipment dealers and other businesses. Any business that sells equipment or parts, or provides services to any governmental agency or political subdivision, is subject to having 3% of the sales withheld until the end of the fiscal year and applied to any taxes owed to the federal government by those businesses. We are requesting that Congress look at this tax provision and recommend removal of this requirement.
5. **National Labor Relations Board and Department of Labor Regulations** - On December 20, 2010, 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 National Labor Relations Board (Board) believes that many employees protected by the NLRA are unaware of their rights under the statute, a concept we do not believe is accurate.

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; and (3) having the Board consider the failure to post the notice as evidence of unlawful motive in other unfair labor practice cases.

In another announcement by NLRB on December 20, 2010, NLRB Acting General Counsel 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 Board official reads a notice announcing that the company violated the employees' right to organize and the will not do so again in the future; and (2) grant the union access to the company bulletin board or electronic equivalent, including email or intranet, and a list of employee names and addresses to facilitate union communication with employees. 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 September 30, 2010 memorandum announcing the Board would be pursuing more injunctions in cases where it believes the employer violated the law during an organizing campaign.

In addition, the Department of Labor (DOL) in its December 20, 2010 semi-annual regulatory agenda announcement indicated that 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.

We ask that Congress review these new and proposed regulations to determine the fairness to businesses and the administration's labor agenda. Additional costs to our dealers to comply will act as a deterrent to additional employment opportunities.

6. **Credit and Finance Issues** – In an industry conducted credit survey in 2009, credit problems were apparent in our industry and still continue today. We have found that finance companies serving the equipment market have raised their creditworthiness standards in response to additional federal oversight. While a tightening of credit terms is not surprising given the recent subprime meltdown, some dealers and distributors have suggested that lenders have over-corrected and that it remains difficult to find financing for equipment purchases even for creditworthy borrowers, including equipment dealers and distributors.

Wholesale financing for inventory financing is particularly difficult, unless a dealer has access to a captive manufacturer finance company. The loss of this financing due to more stringent regulations has affected thousands of equipment dealers, distributors and manufacturers throughout North America. We are asking Congress to review these regulations as well as assist in making additional credit options available through USDA rural development programs, SBA programs and or other banking institutions.

7. **IRS Code Section 263A** - Code section 263A, enacted as a part of the Tax Reform Act of 1986, requires taxpayers to capitalize direct and indirect costs properly allocable to certain real property and tangible personal property produced by the taxpayer and the real property and certain personal property that is acquired by the taxpayer for resale. Section 263A may apply when a business has more than \$10 million in sales for the year. The section is receiving renewed attention from the IRS as more and more businesses and our equipment dealers are exceeding the \$10 million sales threshold. The IRS has not changed the required sales level since the original enactment in 1986. We ask Congress to review the existing threshold and recommend a new threshold of at least \$50 million dollars as a way to exempt smaller business from this unnecessary burden and tax calculation.

Facts about the U.S. Agricultural Equipment Industry:

- It has a broad foothold throughout the U.S. economy, and its **sales represent over \$82.0 billion** worth of business.
- With **U.S. exports of \$6.2 billion**, it is an enormous source of foreign revenue and a major contributor toward balancing U.S. trade.
- It is responsible for **nearly 250,000 U.S. jobs** in all 50 states and provides major support to both rural and urban communities.
- The industry supports a highly skilled labor force and is responsible for a **payroll over \$8.5 billion**.

