

NEWS BULLETIN

Maine Automobile Dealers Association

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2012-16

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MADA OFFICERS VISIT CONGRESS

On September 11 and 12, Maine's NADA Director Charlie Gaunce, Immediate Past Chairman Win Dodge, and MADA staff attended the annual Washington Conference hosted by NADA (MADA Chairman Jack Quirk and Vice Chairman Jay Darling were both at manufacturer national meetings). During this 2-day event, attendees hear presentations by Senators and Representatives of both parties who discuss current issues before Congress. In addition, attendees also participate in discussions led by political research firms, former Capital Hill senior staffers, and NADA legal and legislative staff. The primary focus this year was on taxes and the political election season.

MADA visited separately with Maine Senators Susan Collins and Olympia Snowe as well as Representative Mike Michaud. In lengthy conversations with all three, discussion centered on the White House - proposed changes in corporate taxation, the proposed repeal of LIFO, and the pending reversal of estate taxation (see accompanying position papers). The entire issue of changes in taxation hinges on how Congress handles the December 31st deadline for Congressional action to avoid the "fiscal cliff", which would bring automatic changes to federal taxation and spending.

Currently, Federal Law applies the same tax rates to corporations whether they are "C", "S", "LLC" or some other allowable structure. NADA and the dealers are arguing for the continuation of that system. The proposals before Congress include a lesser rate for "C" corporations, albeit with lower allowable deductions, but a higher rate of taxation for "S" corporations, the corporate structure chosen by most automobile dealerships. In addition, there have been repeated proposals to repeal a business' ability to use the LIFO accounting method, which again would be a major tax increase to automobile dealerships. The third area, estate taxation, currently has a \$5 million per spouse exemption with a 35% tax rate, which on December 31st would revert to a \$1 million exemption with a 55% rate unless Congress acts before that deadline. Our discussions centered on the significant negative impact on dealerships plus the need for businesses to be able to plan on a consistent and stable tax policy.

All three Congressional Members stated that they would support the continuation of the current taxation of corporations, the continued ability to use the LIFO accounting method, and the current levels of estate taxation. Based on these discussions and comments by other presenters during the 2-day conference, it is expected, although not guaranteed, that Congress will deal with these issues in a "lame duck" session between election day and December 31st.

PERSONNEL WORKSHOP TOPICS

On October 16th in Bangor and October 17th in South Portland, MADA attorneys and staff will hold personnel issue workshops. An announcement letter and registration material will soon arrive at your dealership, and we encourage each dealership to participate. In addition to the issues of the hiring process and Family Medical Leave obligations of either Federal or State law, participants will receive a sample employment application form, a list of pre-employment inquiries allowed, the Maine State Bureau of Identification (SBI) criminal history process, flowcharts on Family Medical Leave coverage and eligibility, and sample Family Medical Leave designation and medical certification forms. Participants will leave with a packet of information which they can use in their everyday handling of these two subjects.

The first program segment will address best practices in hiring procedures. Dealers rely upon the collection of information, from various sources, during the process of evaluating job applicants. Hiring workers who will be employed "for the long haul" takes planning and effort from the beginning. Our presenter, an employment law attorney, will summarize a set of effective screening and evaluation practices intended to help you avoid problems, increase employee retention, and maximize employee productivity.

The second program segment will address managing your Family Medical Leave obligations. Are you complying with Federal and State law requirements as to the Family Medical Leave rights of employees? Do you know what requirements apply and when you must address them? Do you need to reinforce your awareness of how Family Medical Leave requirements are tied to medical benefits and workers compensation claims? This segment will provide you with specific methods and guidelines for determining how you must respond when an employee misses work for health reasons, and how you might manage your statutory obligation under Federal and State law.

USE CURRENT FEDERAL I-9 FORM...UNTIL FURTHER NOTICE

Employers who were awaiting the release of the new I-9 Form will have to wait a little longer. The current I-9 Form has an expiration date of 8/31/12 printed in the upper right hand corner. The United States Citizenship & Immigration Services (USCIS) states that employers should continue to use the current I-9 Form until further notice from USCIS, or until a new Form I-9 is released. USCIS's instructions for the I-9 Form indicate that the agency will also still accept the prior version of the I-9 Form that bears a revision date of February 2, 2009. When the comment period on the revisions was opened to the public, and USCIS received over 3,000 responses, USCIS made further revisions and opened a new comment period that expired September 21, 2012. The revised form is expected to be released soon. For additional information, please go to: www.uscis.gov/I-9Central.

MADA REGIONAL MEETINGS IN NOVEMBER

MADA regional meetings are set for November 7 in Portland, November 8 in Augusta, November 15 in Bangor, and November 16 in Presque Isle. Registration information will be sent to you in mid-October.

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DO-NOT-CALL FEES INCREASE OCTOBER 1

The Federal Trade Commission (FTC) has announced that, beginning October 1, the fees for calling numbers on the Do Not Call Registry will increase. From October 1, 2012 until September 30, 2013, telemarketers will pay \$58 for accessing Do Not Call numbers in a single area code, to a maximum \$15,962 for all area codes nationwide. The previous fees were \$56 and \$15,503. Businesses using telemarketing are required to download numbers off the Do Not Call Registry to ensure that those who have registered their phone numbers are not called. The first five area codes are free. For more information, visit www.ftc.gov.

SEPTEMBER 30TH DEADLINE: LARGE EMPLOYERS MUST FILE EEOC SURVEY

Employers with 100 or more employees are required to file a survey with the US Equal Employment Opportunity Commission (EEOC) on or before September 30th of each year. Information about the EEO-1 survey and the web-based filing system are available at www.eeoc.gov/employers/eeo1survey/index.cfm. All companies should have received EEO-1 filing materials by mail no later than mid-August. If you have 100 or more employees and did not receive these filing materials, please go to the EEOC website stated above for assistance.

If you own multiple dealerships or have multiple locations with a combined total of more than 100 employees under common ownership, management or control, you must file this survey even if you don't have 100 employees at any individual location. All federal contractors with 50 or more employees and purchase orders exceeding \$50,000 must file as well.

MEMBERSHIP GOLF TOURNEY A HUGE SUCCESS

The 21st annual MADA Membership Golf Tournament, held September 6 at Auburn's Martindale Country Club, gathered 137 dealers, guests, and associate member sponsors for an afternoon of fun and companionship, with a few golf shots thrown in for good measure. Teams representing 28 MADA dealerships participated. In our next bulletin, we will provide a complete recap of the day, say thank you to our sponsors, and include a photo gallery.

U.S. ECONOMIC CENSUS REQUIRES A RESPONSE

In November and December, more than 4 million American businesses, including Maine's franchised new car and truck dealerships, will receive 2012 Economic Census forms. Responses to the questionnaire are required by law (Title 13, U.S. Code), to be returned by February 12, 2013. Every 5 years, the Economic Census develops a comprehensive portrait of American business, from the national to the local level. Timely and accurate data are vital to effective public policy and important to businesses. The U.S. Census Bureau has created a special Web page at www.business.census.gov to tell you about the Economic Census, and provide statistics to help you assess and grow your business operations.



National Automobile Dealers Association



NADA Legislative Priorities – September 10, 2012

Current Estate Tax Rates Should Be Extended. Legislation passed in 2010 set the estate tax through 2012 at a 35 percent rate and a \$5 million per spouse exemption. Unless Congress acts before the end of 2012, the tax would revert to a 55 percent rate and a \$1 million exemption. NADA supports an extension of the current levels for 2013 as passed by the House, as an interim step towards permanent reform of the estate tax. *Congress should support keeping the estate tax at a 35 percent rate and a \$5 million exemption and preserving other estate planning provisions that help dealerships.*

LIFO Should Not Be Repealed. Many dealerships have used the LIFO accounting method for decades. Repealing LIFO, as the Obama Administration has proposed for the past three years, would trigger a tax on “phantom income” and strip dealerships of working capital. LIFO repeal, particularly in a fragile economy, would make it harder for dealers to maintain current employment levels and manage inventory inflation. *Congress should oppose any proposed changes to current LIFO law.*

Tax Reform Should Treat All Dealers Equally. As the possibility of tax reform legislation in 2013 becomes more likely, it is imperative that any reform encompass both C corporations and “pass through entities” (such as S corporations, partnerships, and LLCs). The Obama Administration has released a framework for tax reform that would affect only C corporations. This approach would create serious inequities for dealers operating as “pass through” entities. They would likely lose the vast majority of their deductions or tax preferences (such as LIFO and accelerated depreciation) while receiving no rate relief at all. *Congress should ensure any tax reform effort provides consistent treatment to all taxpayers, regardless of their entity form.*

Congress Should Retain Service Advisors’ Overtime Exemption. The Department of Labor (DOL) is attempting to roll back a decades-long overtime exemption for dealership service advisors, despite no changes in the law or factual circumstances that might justify such a change. NADA supported language included in the FY 2012 Labor-HHS Appropriations bill (Division F of P.L. 112-74) that prevented DOL from spending money to enforce its rule change. NADA is supporting inclusion of this limitation rider in the FY 2013 Appropriations bill; the language is included in the House’s bill. *Congress should reinforce that service advisors are exempt from overtime consistent with federal court cases and the DOL’s interpretations dating back to 1978.*

Obsolete and Wasteful NHTSA Mandate Should Be Repealed. H.R. 5859, a bipartisan bill introduced by Reps. Gregg Harper (R-MS) and Bill Owens (D-NY), would repeal a mandate that requires the National Highway Traffic Safety Administration to distribute a booklet to auto dealers regarding vehicle insurance costs. Dealers are required to keep a copy of the booklet and make it available to prospective new car purchasers. However, the Obama Administration called the booklet “not useful” to new car buyers, who rarely ever request it. In July, H.R. 5859 passed the House by voice vote. *NADA urges Senators to end this unnecessary mandate by passing H.R. 5859.*

So-Called Right to Repair Legislation is Unnecessary. A coalition of aftermarket parts manufacturers is seeking federal and state legislation to force automakers to turn over proprietary information under the guise that independent mechanics do not have access to the information they need to repair cars. Recent data from the Automotive Service Association (ASA) shows that **75% of non-warranty repairs are completed by independent repair facilities.** *Members of Congress should oppose so-called right to repair legislation.*



National Automobile Dealers Association



EXTEND CURRENT ESTATE TAX LAW THROUGH 2013

Action Needed by the End of the Year to Avoid a Tax Increase; Enact Permanent Law in 2013

Issue

In December 2010, Congress passed a temporary estate tax regime of a 35 percent rate and a \$5 million exemption. Unless Congress acts, the estate tax rate will increase to 55 percent and the exemption will fall to \$1 million on January 1, 2013. NADA supports a one-year extension of the current rate and exemption structure. NADA also supports enactment of a permanent solution to the estate tax in 2013 that would allow small business dealers to plan for the succession of their family-owned dealerships and retain capital within their businesses to preserve economic opportunity for current and future employees.

Background

In 2001, a phase-out and eventual repeal of the estate tax was signed into law. However, the 2001 law included a provision to “sunset” the law after 2010 without further Congressional action, which would have returned the tax to the confiscatory levels of a 55 percent rate with \$1 million exemption.

In December 2010, Congress passed a two-year estate tax regime at NADA-supported levels of a 35 percent rate with a \$5 million exemption. The legislation also included other provisions critical to mitigating the effects of the estate tax, such as stepped-up basis, full transfer of an unused exemption, indexing of the exemption to inflation, and a reunification of the gift and estate taxes at a \$5 million exemption. However, this estate tax regime is temporary, and expires on January 1, 2013. An extension of the current regime and, eventually, permanent reform, is necessary to provide family-owned dealerships with the ability to plan for the succession of the business.

Key Points

- Most dealerships are family-owned businesses with significant estate tax exposure. Half of NADA member dealerships have spent decades building their companies and are second- or third-generation businesses.
- The estate tax particularly hurts dealerships since assets, such as land and single-use showroom facilities, cannot be liquidated to pay the tax without destroying the viability of the dealership.
- Estate tax planning and life insurance take significant resources out of the dealership every year, yet cannot sufficiently mitigate the effects of the estate tax. Family businesses should not have to sell their businesses or incur substantial debt to pay the tax.
- Until a permanent solution is reached, the estate tax will continue to burden the continuity of family-owned dealerships and the future of their employees.

Status

In July 2012, the Senate voted on a package of extensions of expiring tax provisions that did not include the estate tax. In August 2012, the House voted to extend the current rate and exemption structure through 2013. It is likely that the estate tax will be debated in the upcoming lame-duck session. NADA will continue its leadership role in the Family Business Estate Tax Coalition to advocate for an estate tax that provides small business dealerships with permanent relief.

September 2012



National Automobile Dealers Association



NADA SUPPORTS PRESERVATION OF THE LIFO ACCOUNTING METHOD

Issue

LIFO (which stands for “last in, first out”) is an inventory accounting method used by companies to help mitigate the impact of inflation. This longstanding accounting practice allows companies to calculate their income by basing sales on the newest inventory for goods, such as vehicles and parts, which increase in price over time. Over the past several years, Congress has been considering repealing LIFO as a one-time revenue raiser. NADA opposes repealing LIFO, which could be devastating to dealerships and their employees.

Background

A significant percentage of automobile dealerships currently use the LIFO accounting method for their new vehicle inventory. LIFO is a legitimate accounting method that has been in place for over 70 years. Dealerships may not change between LIFO and FIFO (“first in, first out”) without approval of the Internal Revenue Service (IRS). Dealerships assume the risk of artificially increased tax liability if inventory costs should fall once they elect to use the LIFO method.

Some Members of Congress are attracted to the idea of LIFO repeal as a revenue raiser to offset the cost of other tax priorities. Other Members of Congress have targeted LIFO because of its prevalent use by the oil industry. However, LIFO repeal would cause massive collateral damage to other sectors of the economy, including small business automobile dealers.

Key Points

- Repealing LIFO would force dealers currently using the accounting method to report their LIFO reserves as ordinary income, resulting in a **massive tax increase**.
- Repeal of LIFO is tantamount to the government changing the rules in the middle of the game to the detriment of America’s car dealers, and countless other small businesses.
- Repealing LIFO could threaten the viability of many dealers, reducing jobs and overall economic activity.
- LIFO repeal is only about raising revenue; the underlying tax policy is not flawed.

Status

In February 2011, President Obama’s proposed budget included the repeal of LIFO for the third year in a row. In June 2011, the Obama Administration has targeted the repeal of LIFO as a potential revenue increase to be included in a debt ceiling deficit reduction deal. In February 2012, the Obama Administration again proposed LIFO repeal as part of its framework for business tax reform. NADA will continue working with the LIFO Coalition to oppose any changes to current law.

September 2012



National Automobile Dealers Association



TAX REFORM SHOULD PROTECT SMALL BUSINESS ENTITIES FROM TAX INCREASES

Issue

Any effort to reform only the corporate tax code could have a detrimental effect on small businesses, such as automobile dealerships, that operate as “pass-through” businesses, which pay taxes at the individual income tax rates. These businesses could lose the benefit of critical tax preferences (i.e., deductions, credits and exclusions) and gain none of the benefits of a lower corporate tax rate. As the Congressional tax-writing committees work through possible major changes to the tax code in 2013, NADA urges a comprehensive approach that addresses both the individual tax code and the corporate tax code to promote fairness in the treatment of all businesses, regardless of their entity form.

Background

NADA’s diverse membership includes dealerships of all sizes, the majority of which are family-owned. These dealers operate in a variety of entity forms: including sole proprietorships, partnerships, limited liability corporations, and S corporations, as well as some traditional C corporations. Many have paid taxes as their particular entity type for decades, as they have determined what structure best serves their business model. Moreover, within some dealerships, more than one choice of entity may be used.

The Obama Administration has released a framework for business tax reform in which corporate rates would be lowered in exchange for the reduction or elimination of tax deductions and credits. The framework does not propose to lower individual tax rates, but instead includes some small business tax incentives, a number of which would provide either minimal benefit to dealerships or not be available to dealerships at all. This approach would create serious inequities for dealerships operating as “pass-through” entities, as they would lose the benefit of many of their tax preferences (such as LIFO and accelerated depreciation) while receiving no tax rate relief at all. This situation may be further exacerbated by the fact that the Administration has also suggested that undefined “large pass-through” entities be subject to additional taxation.

Furthermore, the Administration has consistently urged Congress to increase the top rates for individual taxpayers. This combination would generate a massive “lose-lose” for “pass-through” entities. Taxable income of the business would be higher (due to the elimination of tax preferences in corporate reform) and such income would then be subject to higher individual tax rates (if the Administration prevails upon Congress to increase individual rates).

Key Points

- Dealerships are a significant source of American jobs, with almost one million employees. Many of these jobs are in “pass-through” entities that pay taxes at individual rates.
- Eliminating or reducing tax preferences for “pass-through” entities to fund corporate tax reform without lowering individual tax rates would seriously harm thousands of dealerships across the country.

Status

Congress should embark on tax reform through regular order, so that the effects of reform on both large and small businesses can be explored in detail. Congress should ensure any effort provides consistent treatment to all taxpayers, regardless of their entity form.

September 2012



National Automobile Dealers Association



SO-CALLED “RIGHT TO REPAIR” LEGISLATION IS UNNECESSARY *Members Should Oppose H.R. 1449*

Issue

A coalition of aftermarket parts manufacturers (AutoZone, NAPA, Advanced Auto Parts, CarQuest etc.) support H.R. 1449, a bill to force automakers to turn over proprietary information under the guise that independent mechanics do not have access to the information they need to repair cars. However, H.R. 1449 is unnecessary because independent repair shops already have access to any information needed to service or repair vehicles.

Background

In 2002, automobile manufacturers and the Automotive Service Association (ASA), a trade group that represents independent repairs shops, signed an industry agreement keeping independent repairers and franchised dealers on a level playing field with regard to access to vehicle service information and tools. This agreement created the National Automotive Service Task Force (NASTF), a body that is designed to resolve any information gaps that may arise. In 2011, NASTF reviewed only 26 service information requests of the more than 500 million automotive service and repair transactions made that year. ASA also opposes H.R. 1449 because automakers are already providing access to information and tools to all parties in the automobile repair industry through a voluntary and cooperative process.

Key Points

- The so-called “right-to-repair” issue is a solution in search of a problem. The bill is based on the flawed premise that the information necessary to service and repair vehicles is not available to the aftermarket. This legislation is unnecessary because automakers and numerous third party vendors (Identifix, ALLDATA, Mitchell1) already sell this information to independent repairers. In fact, independent repair shops currently perform 75 percent of all non-warranty repairs.
- Several states have considered and rejected similar legislation. Massachusetts, after years of a contentious fight, passed a state law that has not been implemented and is likely to create unintended consequences. The Massachusetts law is not a template for a Federal law.
- The industry has already developed a voluntary process to address any problems related to access to service information and diagnostic tools that is working.

Status

Reps. Ed Towns (D-N.Y.) and Todd Platts (R-Pa.) introduced H.R. 1449 on April 8, 2011. The bill was referred to the House Energy and Commerce Committee, and no further action has been taken on this bill. *Members are urged **not** to cosponsor H.R. 1449.*

September 2012