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Obama Wants Tax Reform to Fund Highway Plan

In late February President Obama called for the creation of a $302 billion, four-year highway program to be paid for largely through tax reforms – and by doing so he may have ensured that we won't get one this year.

The President unveiled his proposal Feb. 26 at the Union Depot in St. Paul, MN, a hub for bus, light rail and Amtrak passenger services.

The site proved to be appropriate because the program's mass transit and railroad projects were given equal prominence with highways when Obama and administration officials introduced then and a week later when the plan was included in the President's 2015 budget proposal submitted to Congress.

Republican leaders all but declared the President's budget proposal dead on arrival. "The president has once again opted for the political stunt for a budget that's more about firing up the president's base in an election year than about solving the nation's biggest and most persistent long-term challenges," said Senate Minority Leader Mitch McConnell (R-KY).

"This budget isn't a serious document; it's a campaign brochure," said House Budget Committee Chairman Paul Ryan (R-WI).

For some time now there has been widespread agreement that infrastructure funding, and the Highway Trust Fund in particular, need a boost. But the dilemma all along has been securing agreement on how to fund it.

The President is calling for a corporate tax overhaul that would quickly yield $150 billion by tightening loopholes for U.S. companies doing business abroad, and raise another $56 billion over 10 years from a new fee on other domestic companies and financial institutions.

Surprisingly, some prominent Republican House members also have embraced similar ideas for funding the highway program through tax reform.

Two weeks before the President announced his proposal in St. Paul, House Pennsylvania Republican and Transportation and Infrastructure Committee Chairman Bill Shuster said he was hoping Congress would approve a multi-year highway program by this summer.

At that time Shuster noted that among the funding ideas under discussion was repatriating profits from American companies that are keeping them in foreign countries to avoid taxes.

Shuster later endorsed tax reform legislation that was introduced the same week the President made his highway plan announcement by Michigan Republican Dave Camp, chairman of the House Ways and Means Committee.

The Camp legislation would reduce the number of tax brackets, shrink businesses' write offs, limit mortgage reductions and repeal other homeowner deductions. Under Camp's bill, $126.5 billion of the money raised by these changes would be dedicated to the Highway Trust Fund for eight years.

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Although Camp's proposal garnered support from Shuster – it generated outright opposition from top Republican leaders in the House and the Senate.

All of this leaves in limbo those industry associations and legislators who had thrown their weight behind funding the program by increasing fuel taxes

One recent proposal that attracted support from industry groups came from Rep. Earl Blumenauer (D-Ore.). It would raise federal fuel taxes by 15 cents per gallon, to be phased in over three years, raising an estimated $170 billion in revenues over a period of 10 years.

Lending their support for the proposal were American Trucking Associations, the U.S. Chamber of Commerce, UPS, Amalgamated Transit Union, Associated General Contractors of America and the American Society of Civil Engineers.

Many of these organizations, along with the National Industrial Transportation League, had endorsed the general idea of raising fuel taxes long before Blumenauer introduced his legislation.

Now, with President Obama and Rep. Shuster veering into uncharted territory, it may prove difficult for these groups to focus their members to support using tax reforms to fund the program, especially when the details have yet to be pinned down in the highly fluid and volatile political environment of an election year.

A Pressing Need to Act

The most recent highway program enacted in 2012, called Moving Ahead for Progress in the 21st Century Act (MAP-21), was a two-year stopgap measure designed to keep the program going after it became evident a more ambitious multi-year plan could not be passed.

MAP-21 didn't raise taxes but the legislation authorized $109 billion in spending in highway construction and maintenance.

In the past conventional wisdom has held that no multi-year highway program could be passed during an election year. But even if Congress does not pass a multi-year program, it will need to take some sort action this year because the Highway Trust Fund will dry up by Sept. 30.

In fact, the revenues generated by fuel taxes proved to be inadequate to meet the goals of MAP-21 since it was passed. In recent years Congress has supplemented Trust Fund shortfalls with total of $55 billion in transfers from the general fund, as well as a transfer of about $10 billion for fiscal year 2014 alone.

For a more detailed exploration of these issues, see *ACWI Advance* Editor David Sparkman's article in the March issue of *Material Handling & Logistics* magazine (http://mhlnews.com/).

Court Challenge to New York Decal Fees Moves Forward

Faced with stubborn public opposition to raising taxes at the fuel pump to pay for highway needs, policymakers are casting about for alternatives for generating the needed revenue. But as New York is learning, they have to be careful about the method they choose to embrace.

The Owner-Operator Independent Drivers Association has challenged the constitutionality of the state's imposition of a fee of $15.00 for a certificate of registration and a $4.00 decal charge on all trucks that use New York State highways.

OOIDA noted that failure to pay these fees, which it says amount to taxes, on a timely basis can result in fines, interest, penalties and even seizure of the nonpayer's truck.

OOIDA asserts that New York State's flat vehicle registration and decal charges violate the Commerce Clause of the Constitution. The association is relying on a 1987 decision by the U.S. Supreme Court that struck down two Pennsylvania flat vehicle taxes because they effectively imposed a higher charge per mile on out-of-state vehicles.

On Jan. 28 a New York trial court rejected the state's request that the case be dismissed. The court determined that the Supreme Court's Commerce Clause analysis in the 1987 case, along with the factual allegations made by OOIDA, were sufficient to continue the proceedings.

In addition to seeking to have the decal and registration program halted, OOIDA wants to the state to be required to pay refunds to those truck owners who have already paid them.

Retail Sales Seen Rising 4.1%, Online Sales Could Leap 12%

The National Retail Federation estimates that retail sales (excluding automobiles, gas stations, and restaurants) will increase 4.1%, this year up from the preliminary report of 3.7% growth in 2013.

NRF also said that it expects online sales in 2014 to jump anywhere between 9 and 12%.

“Measured improvements in economic growth combined with positive expectations for continued consumer spending will put the retail industry in a relatively good place in 2014,” said NRF President Matthew Shay.

While increased health care costs and regulatory concerns pose risks for consumers and retailers, Shay is cautiously optimistic about the economy.

“As the industry tackles important issues in 2014, such as immigration and tax reform, we will continue to push our nation’s leaders to support policies that promote growth and create jobs for hard-working Americans,” he said.

NRF expects economic growth will be above its long-term historical average. Early estimates for GDP growth could fall between 2.6 and 3%, an improvement from the estimated 1.9% rate for 2013, and the fastest pace in the past three years.

The labor market is expected to continue its modest recovery, averaging approximately 185,000 jobs per month, and inflation is predicted to inch higher to as much as 1.7% in 2014. The housing sector also is expected to continue to improve in 2014, along with consumer and business confidence.

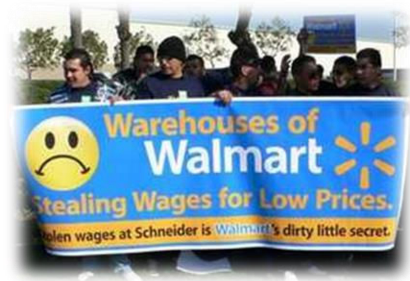
NRF also warned against the nationwide movement by politicians to raise minimum wages. “National policy should be focused on removing barriers to job creation, not creating new regulations or mandates. It’s simple math – if the cost of hiring goes up, hiring goes down,” Shay said.

“A mandated hike in labor costs would negatively impact businesses that employ people in entry-level jobs and ultimately hurt the people it is intended to help,” he added. “This isn’t economic theory – when the minimum wage went up in 2009, half a million part-time workers lost their jobs. That’s a risk our economy can’t afford to take.”

Walmart Can Be Liable for 3PL Subcontractor Wage Violations

Finding that ample evidence existed that Walmart exercised control over the working conditions of the workers employed by Walmart’s warehouse subcontractors, a California federal district court held that Walmart may be jointly liable for wage violations committed by those subcontractors.

Walmart had contracted with Schneider Logistics Trans-Loading and Distribution, which operated the warehouses for Walmart and other retailers. SLTD in turn subcontracted merchandise loading and unloading services to outside staffing agencies.



A union front group called Warehouse Workers United enlisted the support of state agencies and supported worker lawsuits attacking California third-party warehouses used by the giant retailer. They alleged unsafe working conditions and wage law violations they said were mandated by Walmart directives, charges the companies denied.

The workers who performed the loading and unloading services are seeking to recover unpaid wages and are asserting failure to maintain proper records and other related violations by the staffing agencies, SLTD and Walmart.

Walmart asked the court to dismiss the suit on the grounds that it could not be held liable because the company was not the employer of the plaintiffs.

In denying Walmart’s request, the court determined that Walmart exercised sufficient control over the working conditions of the plaintiffs to potentially render Walmart “a joint employer,” and thus be jointly liable for the subcontractors’ alleged wage violations.

Among other things, the court found Walmart was potentially liable because it imposed screening requirements on all employees hired to work at the warehouses; approved overall staffing levels; exercised oversight of hours worked; monitored and enforced productivity standards; influenced pay rates and working schedules; and owned the equipment used at the warehouses.

Whistleblower Safety Protection Still Applies to Truck Drivers

These days when we think of federal laws designed to protect employees from retaliation by their employers, they usually involve financial and labor laws. But fleet operators need to remember that federal transportation law also protects truck drivers who report unsafe equipment.

The same law that prohibits employers from discharging or discriminating against truck drivers for reporting safety violations also protects an driver from termination for refusing to operate a vehicle that the employee believes violates a safety regulation.

Drivers are also protected when they claim to have a reasonable apprehension of serious injury to them or the public due to an unsafe condition with the vehicle. In order to obtain that legal protection, the driver must have requested that the employer fix the unsafe condition.

In January the Seventh Circuit Court of Appeals found in favor of a driver fired by a construction company after he refused to drive his assigned truck, complaining that asphalt covering the vehicle's tail pan created a safety hazard.

The company then provided the driver with another truck, but he reported what he believed to be safety issues with the steering, refused to drive the second truck and complained regarding the safety issue in his daily driving report. He was later fired.

The court held that the driver's fear of injury to himself or the public was objectively reasonable considered the circumstances, and thus his refusal to drive both trucks and his daily driving report were protected activities under the law.

The driver also presented evidence that his employer sent him warnings for refusing to the drive the trucks at the same time it fired him.

The decision is a fresh reminder that fleet managers should take extra precautions to be diligent when handling driver's safety complaints.

NLRB Case May Give Unions Two Bites at the Apple

The National Labor Relations Board has agreed to consider forcing employers to defend unfair practice claims twice—once before an arbitrator, and then again before the board.

In a recent case the NLRB invited interested parties to submit briefs by March 25 on whether it should maintain, modify, or abandon its current approach on deferral to arbitration awards.

Under existing standards, the board will defer to the arbitrator's award under criteria, such as finding the proceedings were "fair and regular," and if the arbitrator's outcome is not "repugnant" to the National Labor Relations Act.

Under the current standard, the party seeking to avoid such a deferral – typically the union – bears the burden of convincing the board not to defer.

The NLRB general counsel urged adoption of the new framework allegedly to afford greater protection to employees' rights. If adopted, the burden will shift to the party seeking deferral (typically the employer), and the NLRB will not defer unless it concludes that the case in arbitration actually incorporates statutory rights at issue.

If an employer seeks deferral, you would need to convince the board not only that the arbitrator's ruling is not clearly repugnant to the law, but also that the relevant NLRA principles were correctly applied.

The negative consequences for employers of the proposed new framework plainly are huge, said attorney Samantha Kagan of the law firm of Reed Smith. "In addition to making it much harder to get the board to defer to favorable arbitration awards, the new framework would imperil the finality of all awards that implicate NLRA issues."

Unions also would get a "do-over" at the board in these cases – resulting in employers having to expend duplicative time and resources, plus run the risk of inconsistent decisions, Kagan noted.

"Adoption of the new framework could even cause collateral damage in additional areas, such as the board's willingness to defer on unfair labor practice charges pending arbitral consideration in the first instance," she said.

OSHA Targets Warehouses for Inspections in 2014

Warehouse and freight transportation were included among OSHA's top priorities for inspection actions this year when it released its Site-Specific Targeting 2014 Program Directive on Feb. 27.

Called SST-14, the directive replaces OSHA's Site-Specific Targeting 2012. The agency said the program is intended to direct its enforcement resources to workplaces where the "highest rates of injuries and illnesses occur."

The new directive calls for programmed inspection plans targeting high-hazard, non-construction workplaces that have 20 or more workers.

The inspection program is based on data collected from the last year's OSHA Data Initiative survey of 80,000 establishments in high-hazard industries.

Among the targeted industries are warehousing, trucking, air transportation and courier services, manufacturing, automobiles, construction materials, scarp and waste, groceries, poultry products, department stores and medical facilities.

OSHA asserted that by directing enforcement resources to those workplaces where the highest rate of injuries and illnesses have occurred, the agency will achieve its goal of reducing the number of those injuries and illnesses.

Among other things, the directive provides a checklist for compliance safety and health officers and outlines scheduling and inspection procedures for them to use. According to the directive, the program's primary inspection lists for federal jurisdiction area offices will target 1,260 private employer establishments.

Employers should expect a higher OSHA emphasis on inspections in 2014 because Congress increased OSHA's funding above the 2013 sequestered spending limits to $552.2 million for this purpose.

While several compliance assistance programs were being cut, OSHA received $207.8 million for enforcement activities – the full amount that had been requested by the White House.

An agency spokesperson said OSHA would conduct 37,635 inspections this fiscal year on that budget of $207.8 million. Originally, the agency planned to do 39,250 inspections, but the 16-day government shutdown in October, 2013 cut that number by about 1,400 visits.

The agency also said it plans to use its 2014 inspection experience to develop a "weighting" system for use in the planning. Some inspections, such as process safety reviews, can take up to six months, while a construction worksite inspection may last only six hours.

Currently, both types of inspections are weighted the same by OSHA. By using a differentiated weighting approach in the future, the agency said it could measure and assign its limited resources more accurately.

OSHA's whistleblower program received $2 million in new funds this year, less than the $6.9 million requested, which was sought to add 47 new hires to its 115-member whistleblower staff.

The agency said it needed the new positions to help reduce a case backlog and deal with additional work created by recent laws like the Affordable Care Act.

OSHA's budget request predicted a backlog of 2,385 whistleblower requests in 2014. Last year, 82% of the 2,272 then-unresolved cases had been open for more than three months, with the average case pending for 13.6 months. Federal law mandates completing complaint investigations within one to three months.

So what will OSHA be looking for? The agency said its most frequent citations in 2013 were fall protection, hazard communication, powered industrial trucks, respiratory protection, ladders and scaffolding, lock out/tag out, electrical wiring methods and general electrical requirements.