SSDA SERVICE STATION DEALERS OF AMERICA AND ALLIED TRADES

SSDA News

Service Station Dealers of America and Allied Trades

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LEGISLATIVE UPDATE

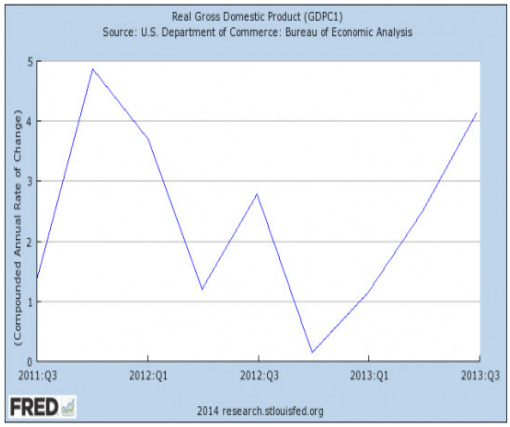
By Roy Littlefield

2013 YEAR IN REVIEW - 2014 OUTLOOK

At the beginning of 2013, family businesses got permanent Bush tax cuts, including an estate tax with a $5.25 million exemption and a 40% top rate, 43.4% if you add on the 3.8% Obamacare payroll tax hike, but, during the rest of 2013, Obamacare disasters, the sequester, the government shutdown, and Congress's failure to pass a highway bill, a farm bill, or immigration reform proved onerous. Over and over again the Republican House passed bills that Senate Democrats wouldn't take up and vice versa. So fewer non-ceremonial bills were enacted in 2013, only 55, than in any other year in U.S. history. Even fewer bills may be enacted in 2014 because it's an election year.

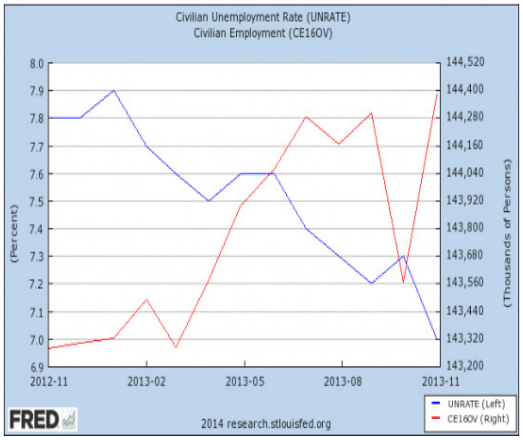
VITAL SIGNS FOR FAMILY BUSINESSES

Gross Domestic Product



On December 20, the Bureau of Economic Analysis released their third estimate of Q3 Gross Domestic Product at 4.1 percent. This increase is primarily from an increase in private sector spending. On January 30, BEA will release its first estimate of Q4 which includes October's government shutdown.

Unemployment



November unemployment decreased to 7.0 percent with an increase of 203,000 jobs. The civilian labor force increased by 455,000 workers, largely due to workers returning to work after the government shutdown. The labor force participation rate changed very little at 63 percent.

Consumer Confidence

Consumer Confidence increased in December to 78.1 from 72.0 in November. Consumers believe the labor market

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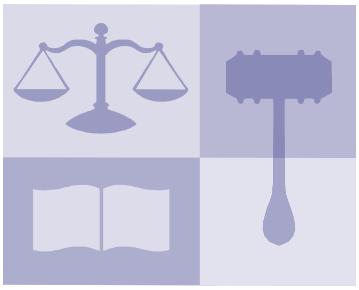
GENERAL COUNSEL CORNER



Below Cost and Predatory Pricing and Supermarket Discount Programs

By Peter H. Gunst
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"Recent state court litigation in California demonstrates just how difficult it is to use those laws to attack supermarket gas discount programs..."

Many states have laws prohibiting below cost sales, some limited in scope to gasoline and others generally applicable to various forms of merchandise. In addition, most state antitrust laws generally prohibit predatory pricing that inhibits competition within any identifiable market.

Recent state court litigation in California demonstrates just how difficult it is to use those laws to attack supermarket gas discount programs, even when those programs result in what would appear to be below cost pricing.

The plaintiff in *Dixon Gas Club, LLC v. Safeway, Inc.* charged that Safeway had engaged in illegal below cost pricing through the use of various discount programs in selling gasoline at its supermarket locations.

Initially, the plaintiff met with some success, obtaining in May 2012 a preliminary injunction prohibiting Safeway from posting prices at its Dixon, California market which were below Safeway's total cost, including the three cent per gallon discount that Safeway provided to its Club Card members.

The plaintiff was less successful at the full trial of its claims last year, which resulted in the court releasing an extensive opinion that dismissed the plaintiff's suit with prejudice.

The court found that the evidence demonstrated that Safeway's retail gasoline price often fell below its actual cost, after figuring in its customer discounts. It concluded, however, that that evidence was insufficient to establish claim for illegal below cost pricing.

That was so, said the court, because Safeway's Grocery Rewards program was intended to boost its grocery sales rather than its gasoline sales.

For that reason, the court said, Safeway could properly charge the cost of its discount program not against its gasoline sales but instead against the cost of its grocery sales. As a result, the gasoline side of Safeway's business was entitled to a credit, which resulted in elevating its gasoline price above its cost of gasoline sales.

The court concluded:

Here the various discounts in question were authored for the purpose of attracting grocery customers; their purpose was to promote grocery sales, and thus they are a "selling cost" of the grocery business, just like grocery advertising is.

In so holding, the court compared Safeway's direct sales of gasoline with partner programs between supermarkets and gasoline retailers, under which a supermarket will reimburse service station operators for honoring price discounts earned by the customer through his or her grocery purchases.

The court reasoned that "no one would ar-

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Pipeline Boost? Keystone XL Report May Disappoint Project's Foes

The State Department is expected to release an environmental analysis on the Keystone XL oil pipeline at the beginning of February that may disappoint environmentalists and opponents of the proposed project, according to individuals briefed on the matter.

The release of the long-anticipated evaluation, known as an "environmental impact statement," sets the stage for a 90-day review period, during which the Obama administration must determine whether the project is in the national interest.

"The EIS is in the final stages of preparation and we anticipate a release of the document soon. As a reminder when it is released, EIS is not a decision, but another step in the process," a senior State Department official said late Thursday, speaking on condition of anonymity.

The report's findings were not immediately available, but government officials said the review would probably disappoint Keystone opponents who say the pipeline would carry "dirty oil" that contributes to global warming. One official said the report would be released Friday.

President Obama refused to issue a permit for part of the project in 2012 amid concerns about its potential impact on a large aquifer in Nebraska. TransCanada, however, received clearance to build the southern leg of the pipeline, which runs between Oklahoma and the Gulf Coast and began shipping oil on Jan. 22.

Obama backed the southern leg of the project during a 2012 visit to a pipeyard near Cushing, Okla, describing the city as a "bottleneck" between producers and refineries along the Texas coast. Obama said then that increased oil and gas production was part of his domestic energy policy.

The State Department, which has jurisdiction over the pipeline because it crosses an international border, released a draft environmental report last March that raised no major objections to the pipeline and said other options to get the oil from Canada to U.S. Gulf Coast refineries are worse for climate change.

The State Department was required to conduct a new environmental analysis after the pipeline's operator, Calgary-based TransCanada, changed the project's route though Nebraska.

TransCanada has agreed to implement 57 voluntary safety measures for Keystone XL in a bid to convince U.S. officials that the pipeline is a good risk.

"We are hopeful the report on Keystone XL is released soon," Shawn Howard, a company spokesman said late Thursday. "Fifteen thousand pages of scientific and technical study published in four environmental analysis reports since 2010 have all concluded this project would have minimal impact on the environment. We don't see how the final report would come to a different conclusion."

Republicans who want Keystone XL to go forward have claimed Obama could with the stroke of a pen help achieve energy independence for North America and create thousands of jobs — a claim that has been disputed by the project's critics because the number of permanent jobs isn't known.

Rep. James Lankford, R-Okla., said the absence of the Keystone project in Obama's State of the Union address on Tuesday was "conspicuous," especially since the president did talk about expediting permits and streamlining bureaucracy dealing with energy projects.

"The clearest form of bureaucratic mess is that pipeline has been almost 2,000 days in the making, just for a permit that happens to be sitting on his desk," Lankford said in a statement to The Associated Press this week.

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HESS Officially Sheds Gasoline Stations

Hess Corp. has moved forward with its decision announced last year to sell its U.S. convenience stores and gasoline stations, Bloomberg Business Week reports. The separation will be tax-free.

Hess will continue to look for a buyer of its stores that run from Florida to New Hampshire while it spins off the unit, which will likely happen in 2014, said spokesman Dennis Moynihan. Hess also said in 2013 that it would be shuttering or selling its refineries to concentrate on producing oil.

"I, for one, am in favor of a spin because it will keep the Hess brand name which has some value and the company won't pay any taxes," said analyst Fadel Gheit with Oppenheimer & Co. Gheit said the business could be worth $2 billion.

Hess branded convenience stores and gasoline stations include Wilco Travel Plaza, Hess and Hess Express, with a total of 1,258 outlets. The company also is the biggest Dunkin' Donuts franchisee by number of outlets. Rumors of companies interested in buying the Hess retail stores include Alimentation Couche-Tard Inc.

The move to sell its retail locations is not new in the oil business. Marathon Oil Corp. and ConocoPhillips jettisoned their gasoline stations when they split up refining from oil production.

NLRB Poster Rule is Dead

Over two years ago, the National Labor Relations Board (NLRB) issued a final rule that would have required all private employers subject to the National Labor Relations Act to display a poster about employees' rights under the Act. The NLRB announced on January 6, 2014 that it would not seek Supreme Court review of two Circuit Court of Appeals decisions invalidating the agency's Notice Posting Rule. The NLRB had until Thursday, January 2, to appeal the cases to the Supreme Court, but allowed the deadline to pass.

Initially, this posting rule was met with much resistance from employers, in part because of its controversial content that some believed was pro-union as the poster failed to mention employees' rights to decertify a union, not to pay union dues in right-to-work states and to object to dues unrelated to representation. The proposed regulation was quickly challenged in court.

As a result of these legal challenges, two federal Courts of Appeals (the Fourth Circuit and the District of Columbia) held that the NLRB's poster rule was impermissible. One court (the Court of Appeals for the District of Columbia) found that the rule violated employers' free speech rights under the First Amendment, and the other (the Court of Appeals for the Fourth Circuit) found that the NLRB did not have the authority under the Act to issue the rule.

The NLRB poster remains available on the agency website and it may be viewed, displayed and disseminated voluntarily. However, businesses that have already displayed this controversial poster have been free to remove it as a result of the legal appeals...and now permanently.

Letter to the Editor

Dear SSDA,

What Employers Can Expect in 2014 and Beyond

Affordable Care Act (ACA) – Obamacare – 2014

• **Waiting Period** – Beginning January 1, 2014 employers may not impose a waiting period longer than 90 days for health care coverage enrollment.

• **Wellness Programs** – The cap for wellness program incentives increases from 20% to 30%.

• **Individual Mandate** – Individuals who choose to remain uninsured will be subject to a tax (fine) of $95 in 2014; this amount increases to $325 in 2015 and $695 in 2016

• Employers expect their **health benefit cost per employee to rise** by 4.8%, on average, in 2014. Organizations estimate that if they made no changes to their current plans, the health benefit cost per employee would jump by an average of 7% next year. One of the key strategies employers are using to manage cost growth is implementing consumer-directed health plans that give workers financial incentives to seek more cost-effective care. Typically, high-deductible plans are paired with a health savings account (HSA) or health reimbursement arrangement (HRA).

• **Although highly contested and debated, the warnings from the insiders at insurance companies include:**

1. Many employers (especially "small' employers) will drop employee and family health coverage in 2014 due to cost increases. Even when facing fines, employers may find it cheaper to discontinue coverage.

2. To fill the large void of the uninsured, some industry insiders speculate that the administration will "bailout" the insurance industry and/or push for SINGLE PAYER INSURANCE, which of course is total government insurance.

Along with the increased cost of health care, additional **concerns for human resource professionals include**:

• A more complex and aggressive legal environment and changes to laws influencing employee rights and employer legal compliance.
• An aging workforce and increased retirements within the Baby Boomer generation (those born between 1945 and 1964)-creating a significant skills and productivity gap. Especially in leadership roles and critical positions.
• An inability to source and hire skilled workers.

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House, Senate Pass FY 2014 Budget

Both the House and Senate passed a $1.86 trillion fiscal year 2014 appropriations bill, the House on Wednesday by a vote of 359-67 and the Senate on Thursday with a vote of 72-26. The measure funds the government through Sept. 30, 2014 and eliminates the need for additional short-term continuing resolutions (which had been funding the government since Oct. 1, 2013). President Obama is expected to sign the measure.

The measure, H.R. 3547 honors transportation funding levels outlined in the current surface transportation bill, MAP-21, at just under $41 billion for the Federal Highway program (an increase of $557 million from FY 2013). The Federal Railroad Administration is funded at $1.6 billion, a decrease of $34.6 million from FY 2013 enacted levels. The Federal Transit Administration will receive $8.6 billion in state and local transit grant funding from the Mass Transit Account (of the Highway Trust Fund), which is consistent with MAP-21 levels. In addition, a little more than $2 billion is included in the bill for transit Capital Investments (such as the New Starts and Small Starts programs). Funding for the National Highway Traffic Safety Administration will see an increase of $8.9 million from the FY 2013 levels to a total of $819 million. The bill also includes $600 million for USDOT's Transportation Investment Generating Economic Recovery (TIGER) program.

"This legislation is one of our highest priorities as Members of Congress and it is critical to our ongoing economic stability and the safety and well-being of the American people," said House Appropriations Committee Chair Hal Rogers (R-KY) in a statement. "It is a good bill and the bipartisan product of careful negotiations between the House and Senate. It provides every facet of the federal government with adequate, responsible funding, while continuing to reduce federal spending—totaling $165 billion in cuts since fiscal year 2010."

"This agreement shows the American people that we can compromise, and that we can govern. It puts an end to shutdown, slowdown, and slamdown politics," said Senate Appropriations Committee Chair Barbara Mikulski (D-MD).

Colorado DOT Warns Against Impaired Driving after Marijuana Legalization

Colorado Department of Transportation officials recently stepped up efforts to educate the public on the dangers of driving under the influence in response to the state's recent legalization of marijuana for recreational use.

CDOT officials say there were 24,742 DUI and Driving While Ability Impaired cases filed in 2012 across the state, resulting in 23,519 drug and alcohol evaluations collected by the Colorado Department of Human Services (CDHS). Of those evaluations, CDHS found that marijuana was involved in 1,045 cases.

"There are some who do not feel that marijuana can impair driving, but it does," said CDOT Office of Transportation Safety Director Darrell Lingk in a statement. "Marijuana affects reaction time, short-term memory, hand-eye coordination, concentration, and perception of time and distance. And just like alcohol, people driving while impaired by marijuana can receive a DUI."

Many of CDOT's impaired driving safety efforts have occurred through its "The Heat Is On" campaign, which runs throughout the year but focuses on 12 specific DUI enforcement periods (largely national holidays and big public events). To highlight the dangers of marijuana-impaired driving, CDOT created an informational webpage on the dangers of drugged driving.

"We've had a seat at the table as CDOT and others determine how to best educate the public on safety issues, providing insight into how best to get the message out that impaired driving is illegal and dangerous," said Medical Marijuana Industry Group Executive Director Mike Elliott. "CDOT and the industry want to stress the importance of using this newly legalized drug in a safe manner."

Study Shows Significant Safety Improvement Years after South Carolina DOT Project

The South Carolina Department of Transportation announced that, based on recent safety data, travelers along a stretch of I-385 in Laurens County have greatly benefited from a safety improvement project.

In 2010, SCDOT tackled the I-385 improvement project, which reconstructed 15 miles of the interstate and also included increasing the "clear zone," or an area beyond the edge of a "traveled way" that gives drivers room to regain control of a vehicle that leaves the roadway or to stop safely. Clear zone sizes are determined by vehicle speeds, traffic volume, and crash data. To meet new standards, SCDOT cleared about 50 feet of trees from the edge of the pavement to create a safer clear zone.

According to SCDOT, an average of 12.4 crashes per year involving trees occurred on that particular stretch of I-385 before the project. Since the project's completion, however, the number of crashes involving trees has dropped to an average of 3.1 crashes per year, representing a decrease of 75 percent. Also, in the five years before the project, there were six fatalities involving trees in this stretch of the interstate. In the three years since the project, there have been none.

"The data clearly show a significant increase in safety, which is our main goal at SCDOT," said SCDOT Director of Traffic Engineering Tony Sheppard in a statement. "The analysis of the crash data demonstrates the positive impacts of providing a forgiving roadway design and adequate clear zone for motorists of errant vehicles to safely bring their vehicle under control."

O'Malley Backs Increasing Maryland's Minimum Wage to $10.10 per Hour

Gov. Martin O'Malley at a rally in Annapolis threw his weight behind a proposal to increase the state's minimum wage to $10.10 per hour by 2016.

O'Malley and Lt. Gov. Anthony Brown both spoke in favor of the increase at a rally organized by Raise Maryland, a coalition of labor, civil rights, religious and other groups. The current minimum wage is $7.25 per hour.

Raise Maryland officials want to increase the state's minimum wage to $10.10 per hour by 2016. After that, the group wants the minimum wage to be indexed to inflation so it doesn't lose value over time.

The coalition also is seeking to raise the wage for tipped workers like waiters from 50 percent to 70 percent of the prevailing wage.

During the 90-day General Assembly session the O'Malley administration plans to sponsor legislation mirroring Raise Maryland's plan, Brown spokesman Jared Smith confirmed after the rally.

Before the event, Raise Maryland provided the media with a list of 68 members of the House of Delegates and 23 members of the Senate who support its proposal - three short of a majority in the House and one short of a majority in the Senate.

Outside, lawmakers gathered. Del. Heather Mizeur, D-Montgomery, and Attorney General Doug Gansler, both running for the Democratic nomination in the governor's race, posed for a picture together.

Their opponent, Brown, was later joined by his running mate, Howard County Executive Ken Ulman.

Supporters held up signs that said "Can't survive on $7.25" and "Raise the Wage."

According to the nonpartisan Economic Policy Institute, approximately 472,000 Marylanders would benefit from an increase of the minimum wage, putting $466 million more in their pockets in the next two years.

Del. Herb McMillan, R-Annapolis, pointed to different studies showing hikes to minimum wage hurt employment for younger and less-skilled workers.

The nonpartisan Employment Policies Institute, a nonprofit organization, estimates Maryland could lose anywhere from 6,082 to 18,247 jobs if the minimum wage is hiked to $10.10 per hour.

McMillan asked whether those making the $7.25 per hour minimum wage would support a raise if they thought there was a chance they would lose their job.

"Giving them a minimum wage increase that could cost them their job is neither compassionate, nor good policy," McMillan said.

Greater Investment in West Virginia Transportation Infrastructure Could Save Drivers Millions Each Year, Report Says

The average West Virginia motorist doles out an extra $333 each year in extra vehicle operation costs due to the deteriorating transportation infrastructure on the state's roadways, according to a report released Thursday by the transportation nonprofit TRIP. That number, a total of $400 million statewide, comes from accelerated vehicle depreciation, increased fuel consumption and tire wear, and extra repair costs from driving on rough roads or sitting in congestion.

The report, "West Virginia by the Numbers: Meeting the State's Need for Safe and Efficient Mobility," discusses the costs to drivers and the state if the transportation infrastructure funding gaps are not addressed. According to TRIP, roughly 35 percent of the state's bridges are in need of repair, improvement, or replacement (13 percent are structurally deficient while the other 22 percent are functionally obsolete). In addition, 36 percent of the state's major roads are in poor or mediocre condition. The report was released in Charleston, W.V., where 42 percent of the roads are in poor or mediocre condition. This transportation infrastructure deterioration can also lead to safety concerns. TRIP's report shows that West Virginia's overall traffic fatality rate was recorded in 2011 as 1.78 fatalities per 100 million vehicle miles of travel—the second highest fatality rate in the nation.

As the state's transportation infrastructure gets older, the wear and tear it experiences could accelerate due to the increase in use. TRIP says that the number of vehicle miles traveled in West Virginia have increased 23 percent from 1990 to 2011 and are expected to bump up another 20 percent by 2030. Investment is necessary, TRIP says, to support the state's economy.

"Highways are vitally important to continued economic development in West Virginia, particularly to the state's tourism, chemical, biotechnology, mining, agriculture and manufacturing sectors. As the economy expands, creating more jobs and increasing consumer confidence, the demand for consumer and business products grows," according to TRIP. "As West Virginia looks to build and enhance a thriving, growing, and dynamic state, it will be critical that it is able to provide a 21st century network of roads, highways and bridges that can accommodate the mobility demands of a modern society."

West Virginia Department of Transportation officials agree that transportation infrastructure investment is of vital importance.

"This report reiterates what we have long known—that our challenges are many and grow in correlation with the need for increased investment," said WVDOT Secretary Paul Mattox.

"Honest Way" Amendment added to Senate Bill 151 in Delaware

Recently, Delaware State Treasurer Chip Flowers proposed the "Honest Way" Amendment to Senate Bill 151, which is aimed at eliminating corruption in managing Delaware's finances and ensuring public input into the management of the state's $2 billion investment portfolio.

Senate Bill 151, which is proposed by Governor Jack Markell and his administration, would give the unelected Cash Management Policy Board (the "Cash Board"), comprised mainly of the Governor's appointees, the ability to allocate the state's $2 billion investment portfolio without rules, protection or oversight from the Treasury or the People of Delaware. Senate Bill 151 would also exempt the unelected Cash Board from laws requiring public input on the Cash Board's decisions on Delaware's money.

The bill also eliminates critical safeguards that are designed to protect Delaware money from corruption and undue influence. Also, the legislation would force the Treasury to allocate Delaware's money to banks, not based on independent expert advice or merit, but on the advice of the unelected Cash Board who may have a personal or financial interest in the chosen banks. State Treasurer Flowers and the Delaware State Treasury oppose Senate Bill 151 without an amendment.

Proposed by State Treasurer Flowers, the "Honest Way" Amendment adopts the following four (4) key features into the operations of the unelected Cash Board:

-Financial Disclosure. Under the Honest Way Amendment, those serving on the unelected Cash Board would need to disclose their financial interest like other public elected officials. It is important that members of the Board do not have any conflicts of interest when managing the state's $2 billion investment portfolio.

-Political Contributions. Under the Honest Way Amendment, the unelected Cash Board members would be prohibited from giving political contributions to those key elected officials involved with the state's finances – specifically, the Governor, Treasurer, Speaker of the House and Senate Pro Temp and any individual seeking to hold those offices.

-Term Limits. Under the Honest Way Amendment, the unelected Cash Board members would serve a maximum of two four (4) year terms. This would ensure that the Board doesn't abuse and amass more power than those elected officials selected by the People to manage the state's finances through the ballot box. Some of the current members of the Board have been serving since 1980.

-Open Government. Under the Honest Way Amendment, the unelected Cash Board must be subject to open government and public oversight, no exception. The very reason why we have open government and public oversight laws is to prevent individuals from acting inappropriately.

Florida DOT, Federal Transportation Officials Cut Ribbon on Tampa Connector Project

Florida Department of Transportation personnel were joined by federal transportation officials recently to celebrate the completion of a highway project that will improve the movement of people and goods in the Tampa region.

The $421 million I-4/Lee Roy Selmon Expressway Connector project provides new direct truck access to the Port of Tampa, improving safety and cutting congestion on local streets. The I-4 Connector project consists of multiple new north-south toll ramps to and from I-4, the Selmon Expressway, and 20th Street. These ramps will connect the interstate with the Selmon Expressay west of 31st Street in Tampa, providing truck ramps connecting the Port of Tampa with I-4. In addition to removing the truck traffic from local roadways, the new Connector also provides for a new evacuation route during natural disasters, additional access to and from the area for emergency first responders, and a route for commuters traveling into downtown Tampa.

"At FDOT we are committed to ensuring Florida has a world-class transportation system to strengthen our economy, create jobs and improve quality of life. The I-4/Selmon Expressway Connector Project offers significant benefits for the citizens and businesses of Tampa Bay and will become the difference maker for the region," said FDOT Secretary Ananth Prasad in a statement.

About $222 million in federal-aid funding was used to build the Connector, including $105 million in American Recovery and Reinvestment Act funds. The project began in March 2010. The ribbon cutting on Dec. 28 also featured a "Run the Connector" 5k race, allowing the public to get an up-close view of the project.

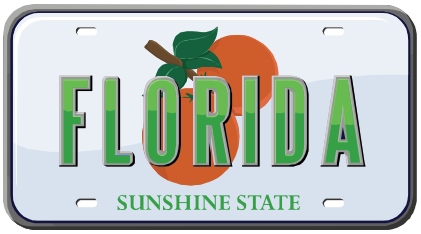
"The Connector will benefit commuters and others who travel through Tampa by providing easy access between Selmon Expressway and I-4," said Federal Highway Deputy Administrator Greg Nadeau in a statement. "With less truck traffic in the community, both residents and commercial drivers will get where they're going more efficiently."

While the new lanes are scheduled to open to traffic Monday, some additional work will continue on the project through spring 2014.

Florida Gov. Announces $8.8 in Transportation Investments

Florida Governor Rick Scott announced $8.8 billion for the Florida Department of Transportation to make transportation improvements across the state.

"Last year, we secured a record $8.6 billion for transportation investments and we continue to see tremendous results in Florida as we spur economic development and create jobs, while reducing burdensome taxes on Florida's families and businesses," Scott said in a statement. "This year, our 'It's Your



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Michigan Legislature Announces Additional $115 Million in Funding for Transportation

Several Michigan legislators announced late last month that more than 100 state and local transportation projects will move forward with some funding from its Roads and Risks Reserve (RRR) Fund.

The Legislature created the RRR Fund as part of its fiscal year 2014 General Government budget, using $230 million in "one-time General Fund revenue," according to Michigan Department of Transportation. Half of that $230 million total was available for appropriation on Oct. 1 of last year, while the other half can be appropriated for roads on Feb. 1.

"By creating the Roads and Risks Reserve Fund, the Legislature acknowledges the vital need for investing in Michigan's transportation system," said MDOT Director Kirk Steudle in a statement. "MDOT appreciates this additional funding, and we will continue working with lawmakers and Gov. Snyder to identify a long-term solution to maintain infrastructure to support Michigan's economic comeback."

State legislators across Michigan simultaneously announced funding for their own districts through press conferences, stating support for the RRR Fund and highlighting projects close to home that will receive funding.

"These important road projects are good news to Michigan's hardworking men and women and another positive step for the state to help create and attract more jobs," said Michigan House Speaker Jase Bolger. "We were able to prioritize existing taxpayer dollars to make needed improvements to Michigan roads and bridges statewide. As I've said before, however, this is just a down payment so we must continue to seek common sense ways to improve roads even more."

Examples of work completed with the help of this funding are road resurfacing, bridge maintenance, roadway reconstruction, bike lane additions, American Disability Act compliant ramps, etc.

Michigan Governor Rick Snyder recently announced a new partnership between the Michigan Department of Transportation and the University of Michigan that will focus on preparing for and advancing connected and automated vehicle technology.

MDOT will work with the University of Michigan's new Mobility Transformation Center (MTC) on research and work already underway in the state, including year-long pilot tests that include thousands of vehicles equipped with connected vehicle technology, among others. MTC plans to "lay the technical, social, cultural and regulatory groundwork to accelerate the development of a commercially viable 'ecosystem' of connected and automated vehicles." The goal is to show an on-road mobility system of connected and automated vehicles and infrastructure in Michigan's southeast region "rapidly and effectively."

MDOT and MTC will design a unique, simulated urban environment for testing the technology before it is tested in real traffic situations. That test environment will include real traffic elements, including roads, intersections, signals and traffic signs, sidewalks, street lights, simulated buildings, etc. The facility, MDOT and MTC officials say, should be completed by fall 2014.

"At MDOT, our top priorities are the safety of the traveling public and helping people and goods arrive at their destinations as efficiently as possible," said MDOT Director Kirk Steudle in a statement. "The creation of the MTC is another critical step in the development of Intelligent Transportation Systems and systems that allow for real-time communications between vehicles and the infrastructure they use."

MTC Director Peter Sweatman said the partnership will build on the already visible success of automated and connected vehicles.

"There have been a host of advances in driverless vehicles, multi-modal transportation, shared vehicles, traffic performance management, as well as new propulsion systems," Sweatman said. "At MTC, we will bring together the expertise and resources to envision and to demonstrate how these advances can be shaped into a working system."

Illinois DOT Announces Step Forward in High-Speed Locomotive Purchase

Illinois Department of Transportation and U.S. Department of Transportation officials recently joined together to announce that they have issued a Notice of Intent to Award Siemens USA for the design, construction, and delivery of about 35 high-performance diesel-electric locomotives for various states. IDOT, as the lead on the train procurement, made the announcement on behalf of state transportation departments of all involved states, including California, Michigan, Washington, and Missouri.

According to IDOT, the new locomotives will be able to reach up to 125 mph and have the cleanest emission standards to date. The Notice of Intent to Award means a vendor has been chosen, but a contract will officially need to be awarded before further action is taken.

The Federal Railroad Administration committed $808 million to fund the creation of next generation passenger rail equipment, which included 35 new locomotives and 130 bi-level rail cars, which has also moved forward (see related AASHTO Journal story here). As part of the deal, all trains and their parts will be built in the United States.

"This award creates jobs, spurs economic growth and further lays the foundation for a sustainable, long-term passenger rail network in the United States," said USDOT Secretary Anthony Foxx in a statement. "We're proud to make investments in the next generation of passenger locomotives that will be built in the United States by the hands of American workers and will provide faster, safer and more reliable intercity passenger service."

IDOT Secretary Ann Schneider agreed with Foxx's enthusiasm for the project to create and maintain jobs.

"This will not only create jobs but create pride in the fact that these high performance diesel-electric locomotives will be made right here on American soil," Schneider said. "We are excited to have moved one step closer in this process and thrilled to be leading this multi-state procurement and securing Illinois' role as a national leader in high-speed rail."

Pipeline Boost? Keystone XL Report May Disappoint Project's Foes

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Sen. Jim Inhofe, R-Okla., said Keystone wasn't mentioned during the speech because the president's "environmental base is keeping him anchored to the losing side of this argument."

"The southern leg of the pipeline has been constructed, starting in the heart of Cushing, Okla., and is already moving to the market vast amounts of resources that are being produced in our country's current energy boom," Inhofe said in a statement. "Like Americans across the country, I call on the president to stop blocking construction of the northern leg of the Keystone pipeline."

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Money Tax Cut Budget' invests in transportation projects to further strengthen our world-class transportation system and enable Florida to be a global hub for trade and commerce. From construction jobs to increased trade opportunities, transportation projects provide tremendous job and economic benefit. This investment will enable our state to remain competitive for many years to come."

The "It's Your Money Tax Cut Budget" is made possible through policies enacted by Scott to cut “wasteful government spending by recommending reductions to government programs and continually evaluating state contracts to ensure the best deal for taxpayers, paying down state debt, placing money into a reserve, and giving back money to taxpayers rather than simply spending state revenue because it exists."

Scott said that money will go to vital investments in port, construction, bridge, and other transportation infrastructure improvements.

Governor Scott's 'It's Your Money Tax Cut Budget' provides significant investment into much needed transportation projects," said FDOT Secretary Ananth Prasad. "These projects attract businesses, create jobs and improve the lives of the citizens of Florida."

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and economic conditions are improving which helped increase confidence in December.

Manufacturing ISM Report on business

December PMI stands at 57.0 percent. This is the seventh month of expansion in the manufacturing industry and the second highest reading of 2013. A reading above 50 shows expansion and below 50 shows contraction.

SMALL BUSINESS OUTLOOK – U.S. STOCK MARKET

On the final day of trading in 2013, the US stock market reached record highs. The Dow finished the year up 26 percent and the S&P 500 finished up 29 percent. Most bulls at the beginning of the year predicted gains of about 10 percent, but none seemed to predict over 25 percent gains. For 2014, Citibank, Bank of America Merrill Lynch, and Goldman Sachs are predicting the S&P to reach 1900-2000.

OBAMACARE ROLLOUT FEATURED ONE DISASTER AFTER ANOTHER

A series of disasters started on October 1st with the malfunctioning healthcare.gov website, which prevented all but a few Americans from signing up until December. Then, in December, when insurance companies cancelled individual market policies that weren't up to Affordable Care Act standards, it became obvious that President Obama couldn't keep his promise, "if you like you policy, you can keep it." Pulitzer Prize winning Tampa Bay Times *PolitiFact* named that the 2013 "Lie of the Year." Mr. Obama pressured insurance companies to restore policies, and some did, but such last minute changes were chaotic and costly. CMS was forced to postpone the small business exchange and then the individual mandate, both for a year. Last May, the Congressional Budget Office estimated that about 2 million people would sign up through small business exchanges in 2014 and that 7 million would sign up through individual exchanges. None signed up through small business exchanges, and barely 1 million signed up with the federal government by the end of the 2013, many by phone. Most state exchanges had serious problems too. If enrollments continue far below forecast, Obamacare could fall of its own weight. President Obama will veto any legislative changes as long as he is in office, and Congress will probably lack the two-thirds votes in both houses to override, so it will take a Republican president and a Republican Congress in 2017 to undo the damage.

OBAMACARE REPEAL PASSED THE HOUSE 47 TIMES, BUT IT DIDN'T PASS THE SENATE ONCE

In 2013, the House tried just about every possible way to repeal, postpone, defund, and pick apart the Affordable Care Act, but Senate Democrats refused to take up any of it.

BUSH TAX CUTS WERE MADE PERMANENT WITH AN ESTATE & GIFT TAX EXEMPTION OF $5.25 MILLION AND A TOP RATE OF 40%

The American Taxpayer Relief Act also set a top income tax rate of 39.6% for couples with taxable incomes over $450,000 and singles over $400,000. Combine that with the 3.8% Obamacare tax on unearned income, and you could face a top tax rate of 43.4%. The top capital gains and dividends tax rate was raised from 15% to 20%.

DEATH TAX REPEAL BILLS WERE INTRODUCED

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On June 19th, Senator John Thune (R-SD) and Rep. Kevin Brady (R-TX) introduced S.1183 and H.R. 2429.

Both Senator Thune and Congressman Brady vowed during the Death Tax Repeal Act press conference to push for death tax repeal to be included in comprehensive tax reform. Republican Leader Mitch McConnell and Senate Finance Committee ranking member Orrin Hatch both joined the press conference to tout their support for death tax repeal. House Ways and Means Chairman Dave Camp waived the ban on revenue bills during tax reform season to allow the Death Tax Repeal act to be offered – we believe this is a powerful sign that the bill could come to the House floor this year.

SSDA-AT signed on to a letter with 40 organizations in support of the legislation.

ESTATE TAX REPEAL VOTES LAST SPRING WERE JUST POLITICAL POSTURING

Congress's budget resolutions, and amendments to them, don't change the law. They set the tax and spending targets that bind congressional committees. They also provide opportunities for political posturing. On March 22, when the Senate took up its budget resolution, S.Con.Res.8, Senator Mark Warner (D-VA), who faces a tough reelection fight next year, proposed to "repeal the estate & gift tax in a fiscally responsible way," meaning "pay for it with other tax increases and spending cuts." That amendment passed with overwhelming bipartisan support, 80-19. Then, a few minutes later, the Senate rejected Senator Thune's (R-SD) amendment to permanently repeal the estate tax, 46-53

THE IRS RELEASED 2012 ESTATE TAX FILING DATA ON SEPTEMBER 15TH

3,738 returns paid an average of $2.3 million each for a total collection of $8.497 billion. 5,673 non-taxable returns were filed as well. The gross estate of taxable returns totaled $62.446 billion, including publicly traded stock of $20.159 billion, state and local bonds of $7.961 billion, cash of $6.133 billion, and real estate of $5.673 billion. 499 farms were taxable with farm assets of $1.458 billion. 1,103 taxable estates reported limited partnership assets of $1.603 billion, and 664 taxable returns had $1.299 billion of non-corporate business assets. As you can see from this chart, the number of estate tax returns and estate tax paid are starting to turn up from after 2010, when we briefly enjoyed no estate tax.

TAX REFORM FAILED TO GET OFF THE GROUND IN 2013

"We're running out of time, and I have no plans to introduce the tax bill this year," House Ways and Means Chair Dave Camp (R-MI) told reporters on December 4th. In a late November meeting, House GOP leaders told Camp he should wait for unanimous support from his Republican Ways and Means Committee colleagues before moving forward. That could be a long wait. Although Mr. Camp may introduce, and possibly mark up, his bill this January or February with repeal of many popular tax breaks to reach a 25% top income tax rate for individuals and corporations, it's unlikely the House would take up such a politically risky bill in an election year.

Also, note that Rep. Camp's chairmanship of the House Ways and Means Committee is term limited to end early next January, and Senate Finance Chair Max Baucus (D-MT) will become Ambassador to China soon. House Budget Chair Paul Ryan (R-WI) is expected to succeed Rep. Camp, and

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Senator Ron Wyden (D-OR) is expected to succeed Senator Baucus.

THE DEBT LIMIT JUST JUMPED $376 BILLION, AND IT WILL JUMP A LIKE AMOUNT ON FEBRUARY 8, 2014

President Obama signed H.R.2775 in the early morning hours of October 17 and sent Congress "written certification that absent a suspension of [the debt limit], the Secretary of the Treasury would be unable to issue debt to meet existing commitments," automatically suspending the debt limit through February 7, 2014 and restoring amounts borrowed from the trust funds with interest. That immediately added $376 billion to the $16.7 trillion debt limit. The debt limit will reset on February 8, 2014 to the amount of outstanding Treasury debt on that date and "extraordinary measures" will carry the government at least until mid-March and possibly into May. Another increase through early 2015 will probably pass on the omnibus appropriations bill Congress is expected to pass January 15th or soon thereafter. That will mean no more government shutdowns in 2014.

IRS DELAYED NEXT YEAR'S TAX FILING SEASON AND YOUR TAX REFUNDS BY ONE WEEK BECAUSE OF THE GOVERNMENT SHUTDOWN

On October 23rd, the Internal Revenue Service announced a delay of one or two weeks to the start of the 2014 filing season to allow adequate time to program and test tax processing systems following the 16-day federal government shutdown. Then on December 18th, the IRS announced the filing season would start January 31st, 10 days late.

TAX EXTENDERS WILL PROBABLY BE RETROACTIVELY EXTENDED THIS YEAR

That from a House Ways and Means Majority tax counsel before the D.C. Bar. This is important for those benefiting from the exclusion for the sale of qualified small business stock, the exclusion for mortgage debt forgiven, the Work Opportunity Credit, the wind, solar, biodiesel, biomass and other alternative energy tax credits, the R&E tax credit, and other tax benefits, 55 in total, listed in this Joint Committee on Taxation pamphlet and described in a 21-page Congressional Research Service report.

$680.3 b. (4.2% GDP) DEFICIT RECORDED FOR FY 2013

On October 28th, Treasury issued September's Monthly Treasury Statement with FY13 outlays of $3.454 tr. and revenues of $2.774 tr. That's the lowest deficit since FY08's $458.6 b. (3.2% GDP). Last May, CBO projected a slightly lower $642 b. (4.0% GDP) deficit for FY13, $560 b. (3.4% GDP) for FY14, and $378 b. (2.1% GDP) for FY15. CBO's next forecast is expected in late January.

MINIMUM WAGE HIKE HAS A GOOD CHANCE OF ENACTMENT THIS YEAR

Senator Tom Harkin's bill, S.460, would raise the current $7.25/hour federal minimum wage to $10.10 over two years. I expect a compromise increase of a lesser amount to be enacted this spring.

ETHANOL RENEWABLE FUEL MANDATE LOWERED

In late November, the Environmental Protection Agency proposed to lower the amount of ethanol

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that must be blended into U.S. gasoline from the over 14 million gallons set in the 2007 law to between 12.7 million and 13.2 million to avoid the 10% "blend wall." The rule will probably be finalized next spring after a 60-day comment period. More starting on p. 67 of its 89-page EPA ruling of August 6, 2013. The oil industry is demanding complete repeal of the renewable fuel standard as unworkable and unnecessary now that gasoline consumption has leveled off and natural gas production has soared.

IMMIGRATION REFORM FACES UPHILL CLIMB

It's anyone's guess whether the House and Senate can agree on an immigration reform bill this year, but, if they do, the good news for family businesses is that guest worker provisions will allow farmers to harvest their crops, if wage requirements are met. More highly skilled workers would get H1-B visas. The bad news is that 11 million out of status immigrants may get a pathway to citizenship and that there would be no guarantee that the funding to secure the border would be forthcoming.

In a historic vote on June 27th, the Senate passed S.744 by 68-32. It would establish a pathway to citizenship for 11 million illegal immigrants and would seal off our border with Mexico by doubling the number of Border Patrol agents to 38,000 and by finishing 700 miles of fence through Texas.

The bill now goes to the House where it faces an uncertain fate. House Speaker John Boehner (R-OH) has repeatedly vowed not to bring any bill to the floor without majority Republican support, which S.744 does not enjoy. However, Boehner has also privately urged his colleagues to pass immigration reform or else to be prepared for further electoral disappointment. Although a bipartisan group of House members is fashioning a compromise bill, it's unlikely to reach the House floor. As House Judiciary Chair Bob Goodlatte (R-VA) noted in this statement, his committee has passed several piecemeal immigration reform bills. If any one of them were to pass the House, Boehner could move to appoint conferees. That would allow a compromise bill to emerge from the conference committee, which could pass Congress. Boehner has called a House Republican Caucus meeting behind closed doors on July 10th to discuss how to proceed.

House Republican leaders are mulling passage of limited immigration reforms in May or June. House Speaker John Boehner (R-OH) has repeatedly vowed not to bring any bill to the floor without majority Republican support, which S.744 does not enjoy. However, Boehner has also privately urged his colleagues to pass immigration reform or else to be prepared for further electoral disappointment. A bipartisan "Gang of Eight" House members worked hard in 2013 to produce a comprehensive immigration reform bill, but three Republicans bolted the group, leaving only one, Rep. Mario Diaz-Balart (R-FL), in what is now the "Gang of Five," with little prospect for producing a bill that could attract a majority of House Republicans. Meanwhile, the House Judiciary and Homeland Security Committees passed several piecemeal bills covering border security, H.R.1417, state and local enforcement, H.R.2278, employment verification, H.R.1772, agricultural guest workers, H.R.1773, and high-tech worker visas, an increase from the current 65,000 to 155,000, H.R.2131, but Senate Democratic leaders refused to take up these bills, insisting on a comprehensive immigration bill. It's unclear if this im-

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passe will be resolved this year.

PRESIDENT OBAMA WILL TRY TO REGAIN TRACTION IN HIS 9PM JANARY STATE OF THE UNION ADDRESS

It's not obvious what more he can say about Obamacare and about the economy, except that both are improving from a very low base. He will have plenty of foreign policy to talk about. There will be a few surprise policy initiatives, but it's very unlikely that Congress will pass any of them this year.

EARLY 2014 ELECTION OUTLOOK: A Republican Senate is within reach, while House Republicans will probably add a few seats to their majority.

To flip the Senate Republican (currently 55D-45R) would require a six seat pickup, and to flip the House Democratic (currently 234R-201D) would take a 17 seat gain. Retiring Senate Democrats in South Dakota, Montana, and West Virginia are likely to be replaced by Republicans, and Arkansas and Michigan are toss-ups. Slim Democratic leads in Alaska, Iowa, Louisiana, Minnesota, and North Carolina could be erased if strong enough Republican challengers emerge. Minority Leader Mitch McConnell (R-KY) is locked in the fight of his life against Kentucky Secretary of State Alison Lundergan Grimes (D-KY), and Georgia leans Republican, but it could become a close race depending upon who emerges from crowded primaries on both sides. No other Senate Republican seats are in jeopardy. So, Senate Republicans could easily pick up a net increase of three or four seats, and five or more is certainly possible. House Republicans will probably add a few seats to their majority. Only one Republicans seat is in jeopardy, the redistricted California-31, which President Obama carried by 57% in 2012, although Democratic infighting has kept it close. The open Democratic seat in Utah-4 is bound to go Republican. Democrats in ten districts are in serious trouble: Arizona-1; Arizona-2; California-7; California-36; California 52; Florida-18; Florida-26; Illinois-10; New Hampshire-1; and Washington-3. Four Republican districts are toss-ups: Colorado-6; Florida-13; Iowa-3; and New Jersey-3. Close races lean Republican in another 15 Republican districts and lean Democratic in 14 Democratic districts. The remaining 214 Republican seats and 176 Democratic seats are unlikely to change.

Wide open 2016 presidential election, not much change in Congress. As in 2008, the 2016 presidential election will be wide open in both parties and will come down to the wire on November 8, 2016. Vice President Joe Biden and former Secretary of State Hillary Clinton are laying the groundwork for the Democratic nomination. New Jersey Governor Chris Christie and Kentucky Senator Rand Paul are the early frontrunners for the Republican nomination, but Senator Mark Rubio and Wisconsin Governor Scott Walker are hot on their heels. In Senate races, 23 Republican seats will be up versus only 9 Democratic seats. None of the Democrats appear vulnerable barring retirements, but three to five of the Republicans will face close races (Illinois, Wisconsin, Pennsylvania and possibly Ohio and New Hampshire). Given how few House seats are truly contested anymore because of gerrymandering and deep pockets, it would take a wave election to flip the House to the Democrats.

NLRB POSTER RULE IS DEAD

Over two years ago, the National Labor Relations Board (NLRB) issued a final rule that would have required all private employers subject to the National Labor Relations Act to display a poster about employees' rights under the Act. SESCO reports

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that the NLRB announced on January 6, 2014 that it would not seek Supreme Court review of two Circuit Court of Appeals decisions invalidating the agency's Notice Posting Rule. The NLRB had until Thursday, January 2, to appeal the cases to the Supreme Court, but allowed the deadline to pass.

Initially, this posting rule was met with much resistance from employers, in part because of its controversial content that some believed was pro-union as the poster failed to mention employees' rights to decertify a union, not to pay union dues in right-to-work states and to object to dues unrelated to representation. The proposed regulation was quickly challenged in court.

As a result of these legal challenges, two federal Courts of Appeals (the Fourth Circuit and the District of Columbia) held that the NLRB's poster rule was impermissible. One court (the Court of Appeals for the District of Columbia) found that the rule violated employers' free speech rights under the First Amendment, and the other (the Court of Appeals for the Fourth Circuit) found that the NLRB did not have the authority under the Act to issue the rule.

The NLRB poster remains available on the agency website and it may be viewed, displayed and disseminated voluntarily. However, businesses that have already displayed this controversial poster have been free to remove it as a result of the legal appeals...and now permanently.

WOTC

The Senate agreed on January 7 to take up the bill to extend unemployment benefits by a vote of 60-37.

Senator Rob Portman of Ohio was the last of five Republicans to join with Democrats to reach 60 votes required to limit debate on the motion to take up the bill, S. 1845.

The vote was critical—if five Republicans continue to hold with Democrats on the next motion to limit debate on final passage of the bill, S.1845 should pass the Senate.

The bill would then go to the House, where the Speaker has already said its cost must be offset by spending cuts. The Senate having failed to provide an offset, the House Republican majority is set to provide one and send the bill back to the Senate, take it or leave it.

The question is whether any House offset is realistic or calculated to score political points—the offset proposed today by Senate Republicans was to gut Obamacare, which is a non-starter for Democrats.
We describe all this because it could become the scenario for passage of the tax extenders bill, S.1859.
It appears the extenders might not be taken up until after January 15th because House and Senate must now turn their attention to passing the all-important Omnibus Appropriations bill to fund the government for the remainder of the fiscal year. That bill must be passed before midnight on January 15th or the government shuts down.

At this moment, House and Senate appropriators have still not reached final agreement on an omnibus bill, even though they've been working since the Ryan-Murray budget deal last month. The thorn as

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usual is Obamacare. If they continue negotiating till the last minute on January 15th there may be a few days of floor time available for Senator Reid bring up the tax extenders bill, but his agenda is uncertain because the White House is pressing to bring up a jobs bill and minimum wage bill as well. Senate Democrats are meeting as we write, so their agenda may become clearer.

When Senator Reid takes up the tax extenders bill, our hurdle for passage will be higher because the bill will cost more and a few Democrats running close races in red states may not vote for what they perceive as adding to the deficit. This means to have a realistic chance, our goal should be to get at least ten Republican senators to vote for the bill in the Senate.

In the House we must win Speaker Boehner's support and Congressman Ryan's support (Ryan is on the way to taking over Ways and Means next year; the present chairman, Congressman Dave Camp, has made clear he will initiate nothing for the extenders except via tax reform, but will produce a bill if the Speaker directs him to).

We must get House Republican congressmen and women to commit to talking to these two people, Boehner and Ryan, and urge them to bring a bill reauthorizing WOTC because it creates private sector jobs, is proven cost-effective and free from fraud and abuse, doesn't add to the deficit, and is vital to a million jobs for young people, veterans, people with disabilities, and others with the highest unemployment rates in the nation.

We cannot stress enough that our campaign for WOTC renewal must continue without pause! Much is at stake in these next couple of months, because if we fail to win an extension, its likely WOTC will remain expired until after the election, or even, as we have warned, until the middle of 2015!

Now is the time to act—the task is clear—SSDA-AT will lobby Republican senators and congressmen to work for renewal of WOTC—they are the people in Congress who can make or break our efforts to pass a retroactive WOTC extension. Write these senators and congressmen, call their offices and make your case to their legislative assistants, find out when your senators and congressmen will be next in the state or district and ask for a face-to-face meeting, at your meetings arrange to bring along representatives of your Chamber of Commerce, state retail, restaurant, or hotel and motel, etc, association, and don't forget to include local people working to help disadvantaged youth, veterans, or people with disabilities get jobs.

Remember, in early December we were told by the Senate Finance Committee that extending WOTC was out of the question, there would be no extenders bill because it would detract, in their opinion, from tax reform. We refused to accept that decision and within three weeks, by the time the Senate adjourned, the Majority Leader had written and introduced an extenders bill and had it ready for a floor vote. This resulted from a team effort—we need the same effort now.

LETTER TO THE EDITOR

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- Economic uncertainty and volatility.
- Greater demand for work/life balance from the younger generations.

Employers are increasingly likely to offer **voluntary benefits** to help workers meet their financial needs and fill gaps in health and benefit coverage. Voluntary benefits such as flexible spending accounts, specific illness/disease insurance plans, and employee assistance programs will increase in popularity.

OSHA forecasts the release of a final rule by April 2014 that **will update the list of industries that are partially exempt from the requirement to maintain a log of occupational injuries and illnesses, generally due to their relatively low injury and illness** rates. The new list will replace the current list of industries based on the Standard Industrial Classification system with a new list, based on the North American Industry Classification system.

The DOL's Wage and Hour Division proposes to revise the **definition of a "spouse"** under the Family and Medical Leave Act in light of the U.S. Supreme Court decision to reverse part of the Defense of Marriage Act (DOMA), in effect recognizing same-sex marriages for the purposes of FMLA coverage.

The elective **deferral limits for 401(k) and 403(b) for 2014** will remain at $17,500. The catch-up contribution limit available to employees age 50 and above is unchanged at $5,500.

The **contribution limit (employee plus employer) for Health Savings Accounts (HSAs)** will increase by $50 in 2014 – for the individual — $3,300; for family coverage — $6,550. The HSA catch-up contribution for employees age 55 and above remains unchanged at $1,000.

The minimum wage will increase in the following states effective January 1, 2014:

- Arizona $7.90 per hour
- Colorado $8.00 per hour
- Connecticut $8.70 per hour
- Florida $7.93 per hour
- Missouri $7.50 per hour
- Montana $7.90 per hour
- New Jersey $8.25 per hour • New York $8.00 per hour
- Ohio $7.95 per hour
- Oregon $9.10 per hour
- Rhode Island $8.00 per hour
- Vermont $8.73 per hour
- Washington $9.32 per hour

Statistics of Interest

- **Energy** – Oil trading will continue at $90 -$95 per barrel.
- **Insurance Cost** – Costs to **rise** 30% to 100% for companies and individuals. High deductibles will be a way of life.
- **Retail** – 4.5% growth in 2013, strengthening to 5.2% — 5.7% in 2014.
- **U.S. Gross Domestic Product** – 2.6% growth in 2014, up from 1.7% in 2013.
- **Federal Deficit** – 3.3% of GDP in 2014, down from 4.1% of GDP in 2014.
- **Inflation** – 1.7% in 2013, rising to 2% in 2014.
- **Unemployment** – Between 6.9% and 7.2% through mid-2014 – the drop continues to be due to the unemployed dropping from the unemployment calculations.
- **Salary Increases** – Base salary increases for 2014 are projected to be 2% to 3%, consistent with the average increase in 2013.

Sincerely,
SESCO Management Consultants
William E. Ford
President and CEO

GENERAL COUNSEL CORNER

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gue that the fuel station in such an arrangement is selling below cost because only the customer's payment should be recognized." The fact that Safeway itself was selling the gasoline, the court concluded, simply made no difference.

The plaintiff's fallback position was that even if Safeway's accounting analysis saved it from liability for below cost pricing, its activities were still predatory because of its unfair impact on competition in the marketplace. Plaintiff's argument in effect was that Safeway was "leveraging" its position in one market to harm competitors in a separate market.

Here, the plaintiff's problem was a failure of proof. Such a claim would require detailed economic proof of identifiable geographic and product markets, and a significant impact on competition throughout that market.

Dismissing the plaintiff's anecdotal evidence and its failure to produce any economic expert testimony, the court said:

> There are no market definitions, no market share evidence, no market structure analysis, no assessment of the extent or risk of market power, nothing, zip, nada.

The court's ruling is on appeal. It demonstrates, however, just how difficult it is to attack grocery discount plans and the like through state laws that probably never envisioned such relatively sophisticated programs.

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To access more articles by the Service Station Dealers' legal counsel, please visit the "Service Station Dealers: Legal Issues" section of the Astrachan Gunst Thomas, P.C. website at: http://www.agtlawyers.com/resources/petroleum.html

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