



**January 14, 2022**

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## **2022 General Assembly Convenes**

*Glen Youngkin Inaugurated Tomorrow*

The doors to the General Assembly's temporary home swung partially open on Wednesday as the House and Senate began the 60-day long session. Capacity limits in committee rooms and mandatory social distancing will allow about a quarter of capacity in the building - which was already substantially smaller than the now demolished old General Assembly building. We are optimistic that the combination of live in-person meetings and virtual contacts will allow us to address the major issues impacting industry.

## **Fuels Tax**

One of the key policy positions during the Youngkin campaign was a pledge to suspend last year's 5 cent increase in motor fuels taxes for one year. Bills were filed this week ([here](#)) to accomplish the rollback. With a 52-48 Republican majority in the House, it is likely that some version of the rollback will pass. The outlook is more unclear in the Senate where Democrats hold a 21-19 majority. Of course when the fuels tax code is revised, all issues related to collection and remission are vulnerable and we will be monitoring closely over the coming weeks.

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## **Do As I Say - Not As I Do**

Prior to his inauguration Governor Northam picked Matthew Strickler to be the state secretary of natural resources. Before his selection Strickler served on the Democratic staff of the US House Resources Subcommittee. He was confirmed unanimously by the General Assembly. After a three year tenure as the most partisan Secretary in Virginia history, Strickler departed in September and is now Deputy Secretary at the Biden Interior Department.

A week ago, the governor elect nominated Andrew Wheeler, who served as EPA director for part of the Trump Administration to be the his secretary of natural resources. Many members of the press, the environmental lobby, and Democratic senators have declared his nomination to be dead on arrival.

Do as I say. Not as I do.

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## **Liquor Liability**

Delegate Runion has sponsored legislation ([here](#)) that, if passed, would make store owners liable should an impacted person cause injury or property damage if proven that the ABC product was sold at a specific

store. This legislation would encourage litigation against businesses and is a priority for the Virginia Trial Lawyers Association. We will be contacting members who have legislators on the Courts and General Laws Committee where these bills will be heard, asking for your assistance in defeating them.

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## **Skill Games/Grey Machines**

This week the Virginia Supreme Court refused to hear an appeal of a lower court decision that re-activated skill games in Virginia last month. This likely means that the games will stay until at least another court hearing in May. However, the outcome of this contentious issue may well be in the hands of the General Assembly in the coming weeks.

Once again, gaming companies from Chicago and Las Vegas are back trying to pass legislation to make their Video Gaming Technology machines legal. The objective is to make Virginia look a lot like Las Vegas with a mini-casino on every corner. At the same time they want a monopoly by legalizing only those games they manufacture, and seek to use the legislative process to clear the field of competition by making skill games illegal. The VPCMA Board has unanimously adopted a policy supporting the continuation of skill/grey machines so long as it includes the remission of taxes as was done for COVID relief (producing \$120 million for the Commonwealth) Last month's court decision precluded the collection of taxes on skill games. Every day that collection does not occur makes long term approval more difficult.

We are still reviewing an large number of bills filed for its impact on industry. A preliminary list may be [found here](#). Should you have any questions please call (804) 282-7534.

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## **U.S. Supreme Court Strikes Down OSHA Vaccine or Test Rule** *From EMA*

In a 6 to 3 decision, the U.S. Supreme Court struck down the Biden administration from enforcing the Occupational Safety and Health Administration's (OSHA) COVID 19 vaccine or test requirements. The ruling effectively kills the vaccine or test rule for private employers. The OSHA rule required workers at businesses with more than 100 employees to get vaccinated or submit a negative COVID-19 test each week to their employer in order to enter the workplace. It also required unvaccinated workers to wear masks indoors at work. The ruling comes three days after the emergency measure started to take effect.

The Supreme Court decision is a big victory for small business energy marketers who faced implementing the complicated and controversial rule but are no longer required to comply. In an unsigned opinion, the Court said "Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly". In addition, "Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category," the court wrote.

The mandates were the most expansive use of power by the federal government to protect workers from COVID-19 since the pandemic began. Nothing in the Court's decision prevents a private employer from voluntarily adopting their own vaccine or test program.

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## **IRS Warns of Significant Claim Processing Delays in 2022; Marketers Urged to File Motor Fuel Excise Tax and Biodiesel Blender Claims Electronically to Minimize Refund Delays** *From EMA*

The Internal Revenue Service is warning taxpayers to expect significant delays in the processing of tax returns during 2022 according to a new report to Congress by the IRS's Taxpayer Advocate. The warning applies to all filings including those related to federal motor fuel excise tax (FET) and biodiesel blender claims. Energy marketers have been plagued by processing delays over the past 2 years. The excessive delays have forced marketers to float hundreds of thousands of dollars in refunds owed to them for biodiesel blending and the tax-free sale of clear diesel fuel to state and local governments and non-profit educational organizations. Ordinarily, these claims are paid within 45 days. Many marketers rely on these refunds to pay for daily operational expenses. IRS claim processing delays have extended payment of refunds out 9 months and longer for many marketers. The IRS cites a number of reasons for the processing delays including; funding reductions, promulgating an array of new COVID related tax credits and stimulus payments, employee resignations and absences, and last but not least, the filing of paper claim forms. Many marketers are still submitting their FET and biodiesel blender credit claims on paper forms. Paper claim forms are like "kryptonite" to the IRS according to the report because they must be processed manually, a laborious task made worse due to lack of adequate resources. Accordingly, the IRS is urging taxpayers to file all claims electronically. Electronic filing is often seamless and results in far fewer processing delays. See the following Q&A on electronic filing.

Frequently Asked Questions - Form 8849, Claim for Refund of Excise Taxes

**Q. Why is IRS offering electronic filing of Form 8849, Claim for Refund of Excise Taxes?**

A. Offering electronic filing of Form 8849 satisfies the Congressional mandate to provide filers an electronic option for filing Form 8849 with Schedules 2, 3, or 8. Schedules 1, 5, and 6 are also available.

**Q. Who may file motor fuel excise claims electronically?**

A. Any taxpayer who pays the provider's required service fee for online submission will be able to electronically transmit Form 8849.

**Q. How do I choose a transmitter to e-file 8849 returns?**

A. IRS has posted the contact information of all approved e-file transmitters. You will need to select one to your liking. IRS does not endorse any one provider and cannot make recommendations. All listed providers are approved to submit returns to the IRS electronically.

**Q. When can I e-file Form 8849?**

A. IRS is currently accepting electronically-filed Form 8849, Schedules 1, 2, 3, 5, 6 and 8. Check with approved e-file transmitters for which schedules they offer.

**Q. Where and how do I access the electronic 8849 tax forms?**

A. Taxpayers will be required to submit their electronic Excise Tax forms through an approved transmitter/software developer.

**Q. Will it cost anything to file Excise Tax forms?**

A. Yes. To electronically file Excise forms, taxpayers will incur the cost of the provider's required service fee for online submission.

**Q. Can all Excise Tax forms be filed electronically?**

A. No. At this point, the only Excise forms available for electronic filing are Form 2290, Heavy Highway Vehicle Use Tax; Form 720, Quarterly Federal Excise Tax; and Form 8849, Claim for Refund of Excise Taxes (Schedules 1, 2, 3, 5, 6 and 8).

**Q. Will IRS continue to accept paper forms once electronic forms are available?**

A. Yes, IRS will continue to accept paper Forms 8849. Electronic filing of the Form 8849 is optional.

**Q. How will Form 8849 e-file improve results?**

A. Refunds for an electronically filed Form 8849, with Schedule 2, 3 or 8, will be processed within 20 days of acceptance by the IRS. All other Form 8849 schedules are processed within 45 days of acceptance.

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## State of Emergency Extended Until February 13

In light of expected winter weather and in one of his last official acts, Governor Northam has

extended the existing state of emergency until February 13. The main point of this is to extend enforcement of the state's price gouging law until that date. The weight and hours of service waiver remain in place (attached) until January 31. As we approach that date, we would appreciate your input on whether an extension is necessary.