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Booster Fuels Attack on Virginia Fire Code Repelled for Now

Readers will recall that in 2017, after more than a year of public hearings and deliberation, the Virginia Fire Code was modified to explicitly prohibit the practice of mobile fueling.

That provision states as follows:

5706.1.1 ***Mobile Fueling Operations*** *Delivery of Class I, Class II, and Class III liquids to the fuel tank of a highway vehicle from a tank vehicle, tank(s) carried on a vehicle, of non-portable container is prohibited.*

Exceptions:

1. *The refueling of highway vehicles in an emergency.*
2. *The refueling of vehicles in compliance with sections 5706.5.4.1 through 5706.5.4.5*
3. *Vehicles used for farm operations and machinery.*

This week the provision came under attack by two representatives of mobile fueling company Booster Fuels who flew in from California to advocate removing this provision from the Fire Code. A previously scheduled meeting held on Wednesday by the Department of Housing and Community Development's (DHCD) Special Fire Code Edit Workgroup was amended at the 11th hour to add consideration of Booster Fuels language removing the mobile fueling prohibition. One of Booster Fuels lobbyists is the former Policy and Legislative Director at DHCD.

Both Mike O'Connor and Woodfin Oil President Justin Andress spoke in opposition to the change noting that it was submitted only after the introduction of House bill 779 which would amend Virginia law to allow mobile fueling in the state, and that revisions to this section of the

Fire Code were not even under consideration before Booster's request. At one point during the proceedings a company representative actually denied that these amendments were being proposed by Booster.

After further discussion by work group members the proposal was carried over until the next meeting of the Fire Code Work group in April. As for the bill itself, it is presently in the House Finance Committee, which traditionally handles matters relative to motor fuel taxation. It is likely to be moved to the House Transportation Committee next week with a hearing to follow.

IRS Issues Guidance On Claim Process For Retroactive Biodiesel Blender Credit

From PMAA

The IRS has issued a special one-time claim procedure (IRS Notice 2020-8) for the $1.00 per gallon biodiesel blender credit, the 50 cents per gallon alternative fuel and alternative fuel mixture credits. The credits were reinstated retroactively for calendar years 2018 and 2019 under the Taxpayer Certainty and Disaster Tax Relief Act of 2019 (the Act).

The special procedures allow for one-time credits and payments covering the entire 2018 and 2019 claim period. Congress reauthorized the retroactive biodiesel blenders credit through December 31, 2022 and alternative fuel and the alternative fuel mixture credits through December 31, 2020.

Important! The IRS is currently revising IRS Form 8849 Schedule 3 to reflect the 2018 and 2019 retroactive claim process. The IRS told PMAA that the revised form (8849 Schedule 3 Rev. Feb. 2020) will be ready before the beginning of the retroactive filing period on February 14, 2020. Claimants should wait for the revised form to file for the retroactive credits. During past retroactive claim periods, the IRS has returned claims filed on outdated forms. PMAA will send out a notice once the revised forms are published.

Click here to read the full PMAA Compliance Bulletin.

Update on Major Retirement Plan Changes

From PMAA

The SECURE Act, enacted into law on December 20, 2019, changed several retirement plan provisions, but will also have a significant impact on estate planning for those who have saved meaningful amounts for their retirement. Click here to read the Small Business

Legislative Counsel's (SBLC) regulatory report.

Final Joint Employer Rule is Released

From PMAA

On Sunday, the Department of Labor (DOL) announced a final rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA). The final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another individual or entity, including guidance on factors that are not relevant when determining joint employer status. The effective date of the final rule is March 16, 2020.

As expected, DOL's rule established a "high bar" for joint-employment under the FLSA, which is supported by PMAA and is an important shift away from Obama-era policy.

The final rule:

- Specifies that when an employee performs work for the employer that simultaneously benefits another person, that person will be considered a joint employer when that person is acting directly or indirectly in the interest of the employer in relation to the employee;
- Provides a four-factor test to determine when a person is acting directly or indirectly in the interest of an employer in relation to the employee, by weighing whether the business, with regard to its franchisee or contractor, maintains the power to hire and fire; to supervise schedules and "conditions of employment;" to set pay; and to keep employment records;
- Clarifies that an employee's "economic dependence" on a potential joint employer does not determine whether it is a joint employer under the FLSA; and specifies that an employer's franchisor, brand and supply, or similar business model and certain contractual agreements or business practices do not make joint employer status under the FLSA more or less likely.

The final rule also provides several examples applying the Department's guidance for determining FLSA joint employer status in a variety of different factual situations. The rule was published yesterday in the Federal Register. Click here for more information.

Labor groups are expected to file suits against the final joint employer rule.