᠎# NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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New Poll Shows Labor Shortage Likely to Persist

Many unemployed Americans are not eager to rejoin the workforce, which does not bode well for the current labor shortage. Fifty-three percent of Americans who became unemployed during the pandemic said they were only somewhat active or not very active at all in looking for work, according to a new poll by the U.S. Chamber of Commerce. Additionally, 56% said they continue to be unemployed for more than six months before it becomes essential to return to full-time work. Eleven percent said it will be more than a year before it is necessary to return to work, and 15% said it will never be essential.

The U.S. economy added back fewer jobs than expected in November. Nonfarm payrolls increased by just 210,000 for the month, according to the U.S. Bureau of Labor Statistics.

"Every day, we see more evidence of a worsening worker shortage," said U.S. Chamber of Commerce President and CEO Suzanne P. Clark. "With businesses across the country and in every industry struggling to find workers, it is deeply concerning that 35% of the unemployed say they are not very active in looking for work—or not looking at all. Policymakers at every level of government must act with urgency to get people back to work and help accelerate the economic recovery."

The Chamber found that more than one in 10 (13%) have left multiple jobs during the pandemic. Among those who have held multiple jobs since April 2020, 57% held their most recent position for three months or less. Nearly a third (32%) of unemployed workers said they would prefer to work in a different industry for their next job.

The poll showed that people are using a combination of income sources, including income from members of their household, stimulus checks, savings and unemployment benefits. One-third of the formerly employed disagree with the statement that "it is essential to return to a full-time job as soon as possible."

Additional analysis by the U.S. Chamber found that quit rates were highest in accommodation and foodservice (6.6%); and in arts, entertainment and recreation services (5.7%). States with the largest drop in labor force participation rates since the start of the pandemic were Vermont (-4.7 percentage points), Nevada (-3.8) and Connecticut (-3.4).

Convenience retailers are increasing their minimum wages to stay competitive. Rutter's is raising its starting wage to $16 an hour, and Sheetz also raised its starting pay this year. Some 7-Eleven locations are currently offering $500 new hire bonuses, and select GPM Investments c-

stores are offering $2,500 sign-on bonuses. Many other retailers offered hiring bonuses during the summer. In 2020, the average full-time associate starting wage at a convenience store was $11.89 an hour, which was up 40.5% in the past 10 years, according to the NACS State of the Industry Compensation Report® of 2020 Data.

Other retailers also pay above the minimum wage to attract talent in a tight labor market. Walmart pays on average $16.40 in the U.S. Target's minimum wage is $15 an hour, and it is paying its team members an extra $2 an hour if they work on a Saturday or Sunday between Nov. 20 and Dec. 19, as well as Friday, Dec. 24 and Sunday, Dec. 26. Starbucks also announced it will raise wages at least twice next year, which would bring its starting pay to $15 an hour by next summer and its average pay to $17.

Appellate Court Allows OSHA Vaccine-or-Test Rule to Advance

The U.S. Circuit Court of Appeals for the 6th Circuit on Friday lifted the stay that was preventing the Occupational Safety and Health Administration's (OSHA) emergency rule from moving forward. The OSHA rule requires privatesector businesses with 100 or more employees to require their employees to get vaccinated against COVID-19 or to undergo weekly testing for the virus.

In November, NACS filed suit to block the rule from going forward and is now joined by about two dozen business associations in that litigation. The NACS suit, along with one filed by multiple states, was originally filed in the 5th Circuit Court of Appeals, which entered a nationwide stay of the rule while the cases were being litigated. Those lawsuits, along with ones filed in every other U.S. circuit court of appeals, were consolidated into the 6th Circuit.

The 6th Circuit panel decided that the OSHA rule could move forward while litigation on the ultimate question of its legality was being pursued. In making its decision, the court found, "The harm to the government and the public interest outweighs any irreparable injury to the individual petitioners who may be subject to a vaccination policy." The court also deemed the potential harms that would occur from the rule as set out by NACS and others to be "speculative."

NACS filed an appeal with the U.S. Supreme Court within hours of the 6th Circuit decision asking for that court to impose its own stay during litigation. The appeal argued that the OSHA rule "will inflict irreparable harm upon hundreds of thousands of businesses across the retail, wholesale, warehousing, transportation, travel, logistics, and commercial industries that collectively employ millions of Americans." And, in NACS' view, the rule would amount to a "transformative" expansion of OSHA's authority without congressional authorization. By Saturday, five other cases had also filed appeals with the Supreme Court.

In response to the 6th Circuit's ruling, OSHA added information to its website stating that it would exercise enforcement discretion in light of the delays imposed by litigation. OSHA indicated that it would not issue citations for violations of any aspect of the rule prior to January 10, 2022, and would not issue citations for violations of the testing requirements prior to February 9, 2022. The time between these dates is similar to those in the rule that required employers to have policies in place by December 6, 2021, and testing/vaccination requirements to be in place by January 4, 2022.

The appeals from the 6th Circuit's decision have been referred to Justice Brett Kavanaugh, who regularly handles emergency appeals from the 6th Circuit. He may rule on the question of a stay on his own or refer the question to the full court. The Supreme Court is expected to act quickly, before OSHA would issue any citations.

U.S. Supreme Court Sets Hearing on Federal Vaccine Mandate

The U.S. Supreme Court will take up the issue of the federal vaccine mandate on Jan. 7.

The court will hear arguments on the mandate during a special session just days before the Occupational Safety and Health Administration (OHSA) was set to begin enforcement of the rule on Jan. 10.

The Supreme Court was not scheduled to hear cases again until Jan. 10, The Associated Press reported.

The court's announcement followed a ruling by the U.S. Court of Appeals for the Sixth District in Cincinnati to lift a stay against the federal vaccine mandate. The U.S. Court of Appeals for the Fifth District in New Orleans put the stay in place on Nov. 6 and declined to lift it on Nov. 12, as Convenience Store News previously reported.

At issue is OSHA's emergency temporary standard (ETS) that states all businesses with 100 or more employees require proof of vaccination. Unvaccinated employees would be required to be tested for COVID-19 once a week and wear a mask.

The mandate was set to go into effect Jan. 4; however, after the Sixth Circuit ruling, OSHA said it would not issue citations for noncompliance with any requirements of the ETS before Jan. 10 and would not issue citations for noncompliance with the standard's testing requirements before Feb. 9.

On Jan. 7, the Supreme Court will also hear arguments over a rule published Nov. 5 by the Centers for Medicare & Medicaid Services (CMS) that applies to a wide range of healthcare providers that receive federal Medicare or Medicaid funding. It requires their workers to receive the first dose of a COVID-19 vaccine by Dec. 6 and be fully vaccinated by Jan. 4.

"Especially as the U.S. faces the highly transmissible omicron variant, it is critical to protect workers with vaccination requirements and testing protocols that are urgently needed," the White House said in a statement.

"At a critical moment for the nation's health, the OSHA vaccination or testing rule ensures that employers are protecting their employees and the CMS healthcare vaccination requirement ensures that providers are protecting their patients," the statement continued. "We are

confident in the legal authority for both policies and [U.S. Department of Justice] will vigorously defend both at the Supreme Court."

NYC Vaccination Mandate

As you may have heard, Mayor Bill de Blasio today announced major expansions to the “Key to NYC” program, the first-in-nation vaccination mandate for workers and customers at indoor dining, fitness, entertainment and performance venues.

Starting December 14, 2021, children aged 5-11 will be required to show proof of one vaccination dose for those venues.

Starting December 27, 2021, New Yorkers aged 12 and older will be required to show proof of two vaccine doses, instead of one, except for those who have received the Johnson & Johnson vaccine.

The mayor also announced a first-in-the-nation vaccine mandate for private-sector workers, which will take effect on December 27, 2021, will apply to roughly 184,000 businesses.

Lastly, the mayor announced 5-11-year-old children will be required to get vaccinated to participate in high-risk extracurricular activities. These activities include sports, band, orchestra, and dance. This requirement for the initial vaccine dose will take effect on December 14, 2021.

The City will issue additional enforcement and reasonable accommodation guidance on December 15, 2021 along with additional resources to support small businesses with implementation.

Acceptable proof of vaccination includes a CDC issued vaccination card, the New York State Excelsior Pass, the Clear Health Pass, and the NYC COVID Safe App.

U.S. Senate Drops Proposal to Tax Vaping Products

A federal tax on electronic cigarettes and vapor products will not become a reality.

Democrat lawmakers in the U.S. Senate shelved the proposal to implement the tax. According to The Wall Street Journal, the decision came as lawmakers are trying to wrap up the $2 trillion Build Back Better package.

The levy was part of The Tobacco Tax Equity Act. If it had moved forward, the federal government would have followed the lead of close to half of the states and Washington, D.C., which already tax e-cigarette and vapor products.

The measure would have taxed vaping products, including e-cigarettes, vaping liquids and oral nicotine pouches, similar to the existing federal cigarette tax rate of $1.01 a pack. However, it would have based the tax on volume of nicotine in the products, meaning in many cases they would have been taxed even higher than cigarettes,.

Power Companies Joining Forces to Build Coast-to-Coast EV Charging Network

A coalition of more than 50 electric companies are coming together to provide a network of electric vehicle (EV) fast-charging ports along major U.S. travel corridors by the end of 2023.

According to the Edison Electric Institute (EEI), the Electric Highway Coalition and the Midwest Electric Vehicle Charging Infrastructure Collaboration merged to form the National Electric Highway Coalition. It comprises 51 investor-owned electric companies, one electric cooperative and the Tennessee Valley Authority.

"EEI and our member companies are leading the clean energy transformation, and electric transportation is key to reducing carbon emissions across our economy," said EEI President Tom Kuhn. "With the formation of the National Electric Highway Coalition, we are committed to investing in and providing the charging infrastructure necessary to facilitate electric vehicle growth and to helping alleviate any remaining customer range anxiety."

To date, EEI's member companies have invested more than $3 billion in customer programs and projects to deploy EV charging infrastructure and to accelerate electric transportation.

As EV sales continue to grow, EEI estimates that more than 100,000 EV fast charging ports will be needed to support the projected 22 million EVs that will be on U.S. roads in 2030.

U.S. Census Survey Reveals Cost Spikes for Small Businesses

U.S. Census Bureau data indicates small businesses - particularly the retail and food service sectors -- are experiencing dramatic price spikes from supply chain disruptions following the COVID-19 pandemic, and the inflation is growing worse.

According to the U.S. Census Bureau's Small Business Pulse Survey (SBPS), businesses across several sectors saw moderate and large increases in prices they paid for goods and services compared to what they considered normal before March 13, 2020. The SBPS measures the effect of changing business conditions during the pandemic and other major events such as hurricanes on small businesses across the country.

The first week studied was August 16 -22, 2021 when nearly 30% of U.S. small businesses said they were seeing large price increases and 40% reported moderate price increases. At the end of November - the latest data available - an average of 35.2% reported large price spikes and 39.6% reported modest price increases.

Some sectors were hit hard with price hikes. At the end of last month, for example, the 44.7% of retailers reported large price increases and 50.4% of food service and accommodations businesses saw large price increases.

Domestic and foreign supplier delays have been on the rise. Reports of domestic supplier delays rose to 45.8% at the end of November from 45% in October and 42.6% in August, and reports of delays on goods from foreign

suppliers increased to 20.7% in late November, from 19.7% in October and 17.5% in August.

The disruptions have not been an easy fix. In late November, 23.2% of small businesses reported difficulties finding alternative domestic suppliers, up from 23.1% in October, 21% in September, and 20.1% in August, the SBPS indicated.

--Reporting by Donna Harris

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White House Unveils Plan to Bolster Trucking Industry

The Biden Administration has released its Trucking Action Plan, which aims to improve trucker retention and recruit more truck drivers and in return, help the national supply chain for the long-term, reports The Hill.

The plan calls for a 90-day initiative by the Department of Transportation (DOT) and the Department of Labor (DOL) to meet with industry leaders, drivers and other stakeholders to improve trucker pay, attract new talent to the industry and better retain drivers.

"Today, the Biden-Harris Administration is announcing a set of concrete actions to address the expansion of trucking," said the White House in a fact sheet on the plan. "These actions will support the ongoing economic recovery and lay the foundation for a next generation trucking workforce that will strengthen U.S. competitiveness and support millions of good driving jobs for years to come."

Features of the administration's plan include:

- Reducing barriers to drivers getting commercial driver's licenses (CDLs): The Federal Motor Carrier Safety Administration (FMCSA) will provide over $30 million in funding to help states expedite CDLs. FMCSA is sending all 50 states a toolkit detailing specific actions they can take to expedite licensing and will work with states to address challenges they are facing. The White House says that FMCSA will also begin closely tracking delays, identifying states that have challenges with issuing CDLs and communicating with all 50 governors about ways they can reduce delays in issuing CDls
- Accelerating the expansion of Registered Apprenticeships: The Biden Administration will have a 90-day challenge to recruit employers interested in developing new Registered Apprenticeship programs and expand existing programs. The DOL also announced FASTPORT, which allows the department to work with trucking employers, unions and industry associations to establish Registered Apprenticeship programs for their organizations in as little as 48 hours. The DOL is investing $8 million in more national apprenticeship intermediaries who can help employers start Registered Apprenticeships in trucking and other supply chain industries.
- Recruiting more veterans: The DOL Veterans' Employment and Training Service and the Department of Veterans Affairs (VA) will work with Veterans Service Organizations, Military Service Organizations, unions, industry trucking associations, training providers and private partners to enable transitioning service members and veterans to attain jobs in the trucking industry. The DOL and VA will work to ensure veterans' driving experience is recognized for those seeking a CDL and will build on proven models, such as SkillBridge programs for transitioning service members.
- Launching joint DOT-DOL Driving Good Jobs initiative: The initiative includes listening sessions with drivers, unions and worker centers, industry and advocates; truck driver pay and unpaid detention time research; identifying effective and safe strategies to get new entrants in the field from underrepresented communities, including women and young drivers; a task force to investigate predatory truck leasing arrangements; and identifying longer term actions to support drivers and driver retention by improving the quality of trucking jobs.

The fact sheet also laid out what the Administration will complete over the next 30, 60 and 90 days.

California Details Phaseout Plan for Gasoline Vehicle Sales by 2035

The California Air Resources Board (CARB) has outlined a timeline to meet its goal of phasing out gasoline-powered vehicle sales by 2035, reports Oil Price Information Service. The countdown clock starts in 2026 with 26% of new car sales being zero-emission vehicles.

According to the plan, zero-emission would make up 34% of sales in 2027, 43% in 2028, 51% in 2029, 61% in 2030, 76% in 2031, 82% in 2032, 88% in 2033 and 94% in 2034.

Last year, NACS Daily reported that California Gov. Gavin Newsom signed an executive order to end sales of new cars and trucks powered by gasoline or diesel by 2035 as part of the state's efforts to promote electric or zero-emission vehicles. Newsom said the move will reduce greenhouse gas emissions by 35% and reduce nitrogen oxide emissions from cars by 80% in the state. The state already requires a certain percentage of new vehicles sold to be EVs.

Californians still would be allowed to own vehicles with internal combustion engines and resell them.

Newsom also directed the CARB to develop regulations requiring all medium- and heavy-duty trucks to be 100% zero-emission vehicles by 2045 "where feasible."

In September, Newsom signed legislation that mandates all light-duty autonomous vehicles in the state to produce zero emissions. The law would take effect in 2030.

Last month, six major automakers and 30 countries committed to phase out new gasoline-powered and diesel-

powered vehicles by 2040 worldwide and by 2035 in "leading markets." The automakers include Ford, General Motors, Volvo, Mercedes-Benz, China's BYD and Jaguar Land Rover. The countries include the world's second-most populous country India, as well as Canada, Mexico and the United Kingdom. The automakers agreed to have entirely zero-emissions new car and van sales by 2040.

OPIS reports that New York and Massachusetts have also passed legislation to phase out gas-powered vehicle sales by 2035, and Washington passed a similar law with a phase out goal of 2030.Meanwhile, the Biden Administration is close to announcing tighter limits on car and truck emissions to counter climate change, reports Bloomberg. The changes will affect passenger and light-duty vehicles from model years 2023 through 2026.

The exact amounts have not been announced yet, but Environmental Protection Agency (EPA) Administrator Michael Regan told Bloomberg last month that the final standards "will be much more aggressive and much more comprehensive." EPA officials in recent months were considering boosting the stringency of requirements for model year 2026 by as much as 10 grams of carbon dioxide per mile beyond the proposed levels.

According to Bloomberg, the changes could increase zero-emission electric vehicle sales. According to a Union of Concerned Scientists analysis, if the EPA boosts requirements for model year 2026 and adopts a more stringent alternative it laid out as an option in August, there would be an additional 1.3 million EVs sold during model years 2023-2026.

CITGO Toughens Grading System for US Gas Stations

CITGO Petroleum Corp. will introduce a stricter grading system for U.S. gas stations Jan. 1 after mystery shop inspections revealed a "large number" of brand violations that "must be addressed," according to a Dec. 15 letter to branded wholesalers.

Research shows brand reputation, as well as cleanliness and maintenance standards "help drive consumers to the pump, both of which are highly important to the CITGO brand," wrote Kevin Kinney, general manager, brand equity development.

The letter said CITGO would deduct 50 points from the quarterly Trimark of Excellence mystery shop scores for any branded stations that are found with missing or damaged CITGO sign face panels within the price sign; missing or damaged aluminum composite material fascia panels on the canopy; missing or damaged decking under the canopy; or missing or damaged channel letters from the canopy.

The point reduction will result in an immediate automatic failure. But the location can retroactively earn back the points and any penalties if it corrects the deficiencies and submits an appeal with photos of the corrections before the end of the subsequent quarter.

The franchise agreement requires CITGO stations to be operated in "a clean, healthful and lawful manner." CITGO can debrand any gas station failing to meet those provisions, Kinney said.

"By providing a consistent fueling experience, your locations help build brand loyalty with consumers," he wrote. CITGO ranks 19th in national market share based on gas brand at 1.60% with a 3.66% share of retail outlets, according to OPIS MarketSharePro. Five years ago, CITGO ranked 14th nationwide in market share as a gas brand at 2.29%, with4.60% of the outlets, OPIS figures show.

--Reporting by Donna Harris,

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Juul Settles Youth Marketing Lawsuit in Arizona With $14.5M Agreement

Juul Labs Inc. settled with another state over claims that it marketed its vaping products to underage users.

On Nov. 23, Arizona Attorney General Mark Brnovich announced the state reached a $14.5-million settlement with the vapor company. In addition to the financial settlement, Juul agreed to make changes to corporate practices to ensure its products are not marketed or sold to youth in Arizona.

Of the $14.5 million, the state will use $12.5 million for programs to stop youth vaping.

"Today's settlement holds Juul accountable for its irresponsible marketing efforts that pushed Arizona minors toward nicotine and the addiction that follows," Brnovich said. "Combatting the youth vaping epidemic remains a priority for our office with both our undercover Counter Strike program and zero tolerance for vaping companies that mislead or deceive."

In July, North Carolina became the first state to reach a settlement with Juul over concerns that its product attracts underage users.

Under a consent order reached with State Attorney General Josh Stein, Juul agreed to pay $40 million and make changes to the way it conducts business. The $40 million, which Juul will pay to the state over the next six years, will fund programs to help people quit e-cigarettes, prevent e-cigarette addiction, and research e-cigarettes.

The Arizona attorney general's office filed a lawsuit against Juul in January 2020 for engaging in deceptive and unfair acts and practices. It alleged Juul marketed its products to appeal to and target young people while misleading them on the risks associated with those products.

The state also alleged the company failed to implement appropriate protective measures to ensure its products were not sold to underage consumers. It also alleged that Juul misled all consumers regarding its products' true nicotine concentration.

As part of the settlement, pending court approval, Juul has committed to company-wide changes to its business practices to ensure that its products will not be marketed or sold to Arizona's youth, including:

No marketing that appeals to or targets individuals under the age of 21, including the use of cartoons in advertising, and no advertising near schools.

No publishing, marketing, or advertising material for Juul Products on any social media platform, no engaging or paying social media influencers, and no use of persons under age 30 in its advertising.

- No Juul-sponsored events where persons under 21 will be present.
- No selling to Arizonans under 21 years of age and to use an independent age-verification system to verify Administration approval.
- Ensuring retail stores in Arizona that carry and sell Juul products adopt age-verification compliance systems, including a penalty system for retailers that fail age-verification compliance checks.
- Permitting Arizona residents to report, through a "track-and-trace" program on its website, the serial number of any Juul device confiscated from an Arizona resident who is under 21 years of age.
- Providing additional and transparent disclosure of Juul's nicotine content.

IQOS U.S. Import Ban Goes Into Effect

Two months after the U.S. International Trade Commission (ITC) ruled Philip Morris International (PMI) and Altria Group Inc. must stop selling and importing the heat-not-burn tobacco product, IQOS, the ban has gone into effect.

The Sept. 29 ruling followed a finding that IQOS infringes on two patents by British America Tobacco Group (BAT), as Convenience Store News previously reported.

London-based BAT is the parent company of Reynolds American Inc.

The import ban went into effect after the Biden Administration failed to intervene before the two-month deadline.

"Today's announcement provides a measure of success for our enforcement of IP [intellectual property] rights to ensure we can continue to innovate, as is common practice among innovation-based industries," said Gareth Cooper, assistant general counsel for BAT. "As we have strenuously noted, there was no reason to overturn the policy and legal arguments already rejected by the foremost global experts on patent law, and the ITC's exclusion order was properly issued and consistent with the public interest."

Cooper added developing a wide range of consumer-acceptable choices of products regulated by the Food and Drug Administration that may be less harmful than cigarettes requires a tremendous investment in innovation.

"We have made significant investments in developing the industry's broadest portfolio of innovative e-cigarette technology as part of fulfilling our goal to reduce the harm from cigarettes, and we will continue to defend our IP robustly across the globe," Cooper said. "Innovation is laborious and cost-intensive work, and we remain confident in our patent defense strategy and the ITC's findings."

According to a report by Bloomberg, the next step for PMI and Altria is to seek a delay with the U.S. Court of Appeals for the Federal Circuit in Washington, the nation's op patent court, which will hear any appeal of the underlying patent case.

PMI told the news outlet it is disappointed in the results. "Our contingency plans to return IQOS to the U.S. market are underway," it said in an emailed statement. "The U.S. patent office is also reviewing certain claims of the patents in question with initial rulings expected in 2022, albeit subject to an appeal process."

Build Back Better Fails in Senate

For more information on the proposed legislation see the attachment at the end of the newsletter. The legislation is likely to reappear in an altered form later this year

Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 518-452-4367

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NEW YORK CITY - 10 Employees or Fewer

	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Gen Minimum Wage	**$12.00**	**$13.50**	**$15.00**	**$15.00**	**$15.00**
Fast Food Min Wage	**$13.50**	**$15.00**	**$15.00**	**$15.00**	**$15.00**
Fast Food Differential	*$1.50*	*$1.50*	*$0.00*	*$0.00*	*$0.00*
Minimum Weekly Salary	**$900.00**	**$1,012.50**	**$1,125.00**	**$1,125.00**	**$1,125.00**

NEW YORK CITY - 11 Employees or More

	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Gen Minimum Wage	**$13.00**	**$15.00**	**$15.00**	**$15.00**	**$15.00**
Fast Food Min Wage	**$13.50**	**$15.00**	**$15.00**	**$15.00**	**$15.00**
Fast Food Differential	*$0.50*	*$0.00*	*$0.00*	*$0.00*	*$0.00*
Minimum Weekly Salary	**$975.00**	**$1,125.00**	**$1,125.00**	**$1,125.00**	**$1,125.00**

NASSAU, SUFFOLK and WESTCHESTER COUNTIES

	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Gen Minimum Wage	**$11.00**	**$12.00**	**$13.00**	**$14.00**	**$15.00**
Fast Food Min Wage	**$11.75**	**$12.75**	**$13.75**	**$14.50**	**$15.00**
Fast Food Differential	*$0.75*	*$0.75*	*$0.75*	*$0.50*	*$0.00*
Minimum Weekly Salary	**$825.00**	**$900.00**	**$975.00**	**$1,050.00**	**$1,125.00**

UPSTATE -- ALL OTHER COUNTIES

	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Gen Minimum Wage	**$10.40**	**$11.10**	**$11.80**	**$12.50**	**$13.20**
Fast Food Min Wage	**$11.75**	**$12.75**	**$13.75**	**$14.50**	**$15.00**
Fast Food Differential	*$1.35*	*$1.65*	*$1.95*	*$2.00*	*$1.80*
Minimum Weekly Salary	**$780.00**	**$832.00**	**$885.00**	**$937.50**	**$990.00**

The Latest Update on Build Back Better- Manchin Signals No

Senator Manchin has taken his stand—he wants the Build Back Better Act thrown out entirely.

"If I can't go home and explain it to the people of West Virginia, I can't vote for it. And I cannot vote to continue with this piece of legislation. I just can't. I've tried everything humanly possible, I can't get there... This is a no on this legislation." -Senator Manchin

The next moves legislatively are up to the President, Senator Schumer and Speaker Pelosi.

SSDA believes a budget reconciliation bill can survive because it's necessary to fund the government.

Recall that the Federal government is being funded by a continuing resolution which expires in February. Thus, a must-do bill to fund the government to the end of FY 2022 has good odds of being enacted around that time.

Congress can elect to pass another CR in February—but that means every department of government will be operating mostly on last year's funds and staff.

A Look at the Build Back Better

On November 19th, the House passed the Build Back Better Act (the "BBB") (HR. 5376).

In the tax area, many of the provisions which could have been very detrimental to small businesses and their owners were removed from the final House passed version of the BBB.

Specifically, in the final House bill, this is what happened with the proposed tax provisions:

·**No changes to the individual tax rates for the vast majority of Americans.** No change to income tax or capital gains rates. Only those with modified adjusted gross income ("MAGI") of more than $10,000,000 will see an increase in income taxes through a new surtax;

·**No change to the estate and gift tax exemption amounts or rates for anyone**;

·**No change to the step up in basis for assets going through an estate.** This provision could have been devastating to many small business owners and had the potential to impose a new capital gains tax on many Americans who are not "wealthy" and could have potentially caused the forced sale of family homes, farms and businesses to pay the new tax;

·**No change to the grantor trust rules.** Earlier versions of BBB contained a provision dealing with grantor trusts which would have eliminated a popular estate planning tool and would have created havoc with almost all existing irrevocable life insurance trusts;

·**No change to the valuation discounts used when transferring interests in most family-owned businesses from an older to a younger generation.** The original proposals would have eliminated the ability to transfer interests in family LLCs and partnerships to the younger generation in a cost-effective manner;

·**A new significant surtax for the super wealthy and non-grantor trusts.**

·Additional 5% surtax on MAGI in excess of $10,000,000 (single or married filing jointly) for individuals and in excess of $200,000 for non-grantor trusts;

·Extra additional 3% surtax on MAGI in excess of $25,000,000 (single or married filing jointly) for individuals and in excess of $500,000 for non-grantor trusts;

·**No change to C corporation tax rates**;

·**Expansion of the 3.8% net investment income tax (NIIT) to apply to active business income from pass-through entities (such as S corporations and partnerships) for those taxpayers earning more than $400,000 (if single) and $500,000 (if married filing jointly)**. Under current law the 3.8% net investment income tax only applies to passive income. The effective date for this provision in the House bill is January 1, 2022;

·**No change to the very important 20% qualified business income deduction under 199A for pass-through entities**. Though the 199A deduction is still set to sunset at the end of 2025;

·**A number of new IRA provisions for taxpayers most applicable to those who have accumulated more than $10,000,000 in retirement plan assets.**

·No new IRA contributions allowed for those who have $10,000,000 or more in retirement plan accounts, but only for "applicable taxpayers" those making more than $400,000 filing single or $450,000 filing jointly. This provision is effective as of January 1, 2029.

·For applicable taxpayers who have retirement plan accounts valued in the aggregate at more than $10,000,000, there will be a new Required Minimum Distribution (RMD) requiring a withdrawal equal to 50% of the value over the $10,000,000 limit. This provision is effective as of January 1, 2029.

·In addition, applicable taxpayers who have aggregate retirement plan accounts over $20,000,000 must draw down 100% of any Roth accounts to bring the value down to $20,000,000. This provision is effective as of January 1, 2029.

·No after-tax Roth conversions after 2021 (same as the initial proposal). This change affects very few taxpayers who own or are employed by small businesses.

·No Roth conversion for applicable taxpayers after 2031 (same as the initial proposal). This represents a significant change which is ameliorated by the 10 year delay in the effective date. It is deemed to be a revenue raiser because it will incentivize applicable taxpayers to do a Roth conversion before 2031. When a taxpayer converts all or a portion of a traditional IRA to a Roth IRA, income tax on the entire amount converted is due.

·One IRA provision from an earlier version of BBB is out – IRAs can continue to invest in private equity. The original version of BBB included prohibitions against IRAs being invested in assets for accredited investors which have been eliminated;

·**Changes to 1202 stock so that there is a retroactive reduction of the 100% or 75% benefit to 50% for individuals with AGI of $400,000 or more and all non-grantor trusts and estates.** Only change from the original version of the BBB was to clarify the effective date is "after September 13, 2021."

·**A change to the SALT (state and local taxes) deduction limit increasing it up to $80,000 until 2031 at which point the deduction would go back permanently to the $10,000 limitation** brought in by the Trump tax bill. This is a revenue raiser since under the current law, the $10,000 limitation is set to sunset at the end of 2025 and would revert to prior law with an unlimited SALT deduction as of 2026;

·**No required reporting of banking transactions to IRS**;

Now the action moves to the Senate. It's too soon to judge what the Senate version will look like or even when it will be brought up, however it seems unlikely that any other negative tax provisions will come in, particularly with Senator

Manchin having the deciding vote. Senator Bernie Sanders (I-VT) may have a lot to say but the Senators who will be most important are Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). Based on Senator Manchin's comments, it is possible he will require some of the new social programs in the House passed version of the BBB be pared back or eliminated which will reduce the cost of the bill. He has specifically mentioned having concerns with the paid leave program in the bill, as well as expanding Medicare, creating a methane emission fee and having a larger tax credit for union-made electric vehicles. Senator Sanders, among other things, wants to expand the House version which expanded Medicare to cover hearing, to also include coverage for vision and dental. This will only happen if Senator Manchin is okay with it, which is doubtful. He has already expressed concern that the country cannot pay for Medicare as it stands today let alone afford to expand it. It is also possible that the Senate will cut back the House's SALT provision so the deduction is only available to those taxpayers who are below the $400,000 filing single and $450,000 filing jointly income thresholds or some higher threshold. If the Senate did entirely throw out any changes to the SALT deduction, it is quite possible that it would be brought back in conference as the deduction was the critical factor in wooing the votes of a number of House Democrats from high tax states.

Senator Manchin does not seem to be in any rush to do anything that would position Senate Leadership to bring the bill up until at least the end of the year because of his concerns with parts of the bill, inflation, and the Senate's busy schedule, including raising the debt ceiling and getting a defense bill through. If Senator Manchin sticks with this approach, then the conference likely would be in the spring. It is even possible that the Democrats in the Senate will fail to pass the bill.

You may have noticed that for months Speaker of the House, Nancy Pelosi (D-CA) was trying to get a bill passed in the House that would be able to get through the Senate unchanged. When it became apparent that to get the infrastructure bill through the House, the BBB bill would have to be decoupled from a version acceptable to the Senate, Speaker Pelosi freed the Representatives to pass the version they wanted. The House Democrats know this version will not get through the Senate and basically the House will have to adopt whatever comes out of conference.

It took a lot of work for a number of associations to get rid of the most damaging tax provisions (many of which would have hit upper middle class taxpayers as well as small business owners). For its part, SSDA was one of the first groups to respond to initial proposals to eliminate the step-up in basis and reduce the estate tax exemption which started to crop up a few years back by starting to educate folks on the Hill as well as the other small business associations as to the damage these provisions could wreak. We also were one of a handful of associations to lead the charge against the potential harmful limitation of the 199A deduction. SSDA

also worked with many other associations, including the Independent Community Bankers of America, to oppose and eliminate provisions that would have required reporting of numerous banking transactions to IRS.

As of now, BBB went from a bill with many potentially disastrous tax provisions for small businesses to one whose major tax provisions are aimed squarely at the ultra-wealthy. It's probably too early for privately owned and family-owned businesses to breathe a sigh of relief but we'll know soon enough whether they can.