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INSIDE THIS ISSUE

The Biden Budget

By Roy Littlefield, SSDA-AT

As most of you are probably aware, on May 28th, the White House released President Biden's proposed 2022 Federal Budget. On the same day, U.S. Treasury released what is known as the Green Book, which details and scores the President's various tax proposals. These documents, which incorporate elements of the President's previously announced American Jobs Plan and American Families Plan, are the most detailed glimpses we have gotten thus into the nitty gritty of the President's proposals.

Of course, as we've seen time and time again, a President's budget proposal is just that – a proposal. Congress is free to entirely disregard it and go their own direction. However, particularly when the same party is in control of Congress and the White House, Congress is typically more inclined to pick and choose portions of the President's budget to incorporate into the appropriations bills that will emerge in the coming months.

So what are some the big things that we will now be watching for as negotiations for FY2022 get underway?

Revenue raisers, revenue raisers and revenue raisers…

President Biden's $6 trillion budget proposal includes significant investments in non-defense spending. Under the President's proposal, the Departments of Commerce, Education, and Health and Human Services and the Environmental Protection Agency would each see their budgets increase by more than twenty-percent with the Department of Education seeing the highest bump at 40%. The budgets for the Department of Defense and Homeland Security would be kept essentially the same from FY2021 and no agency would see notable reductions to their budgets.

In turn, the President's budget proposes to bring in $3.6 trillion in new tax revenue over the next 10 years through a number of tax changes, many of which would be highly contentious. If it were enacted as proposed (which simply will not happen), the proposal would result in a net tax revenue increase of $2.4 trillion (due to the extension and expansion of a number of tax credits such as the child tax credit). Even with this increase, it is estimated that the proposed budget would add $1 trillion to the federal deficit over the next decade.

The bottom line to all this is that – even if Congress were inclined to incorporate just some of the President's proposed spending increases – the focus will be on where to come up with the money to (at least partially) pay for these increases.

On the strictly corporate side, the President's budget proposes to increase the corporate tax rate to 28%. From what we've seen so far – this is a non-starter even amongst the President's own party. Senator Joe Machin (D-WV), whose vote will be essential to passing any legislation, has indicated that he is not comfortable with a 28% corporate tax rate though he could support a 25% rate. The proposal would also raise revenue through a number of changes to the way that businesses with international earnings are taxed.

The proposal is silent on Section 199A deduction for owners of closely held businesses. While it is a good thing that Section 199A is not being targeted for immediate elimination, the provision is set to expire in 2026 – at which time, depending on where the corporate tax rate stands, these closely held businesses would be placed at a severe disadvantage to their corporate counterparts. SSDA has advocated, and will continue to push, for making Section 199A permanent. Even though the budget proposal does not specifically mention limiting Section 199A, there is some thought that this option may still surface as a pay-for by limiting this valuable deduction only to individuals who make less than $400,000.

Interestingly, the proposed budget would not change the gift or estate tax thresholds. Unfortunately, the same cannot be said of the capital gains tax system. The President has proposed taxing capital gains on assets going through an estate, in other words death would become an event that would trigger capital gains. Presently, not only are assets going through an estate not subject to a capital gains tax but they get a new "stepped-up" basis to the assets then fair market value. Upon a careful review of the somewhat sketchy guidance on the proposal that has come out thus far, it even appears that contributing property to a partnership would trigger capital gains as would removing property from a partnership. Even though this change is billed as only affecting the ultra-wealthy, it has the potential to wreak havoc on many small businesses, farms and ranches by requiring the payment of substantial taxes upon the death of the owner. For the first time in our nation's history, death could cause the same asset to be taxed by estate taxes and by income taxes (capital gains tax).

Some of you may have seen an article this week in ProPublica which has obtained data (allegedly leaked from the IRS) which shows how few taxes some of the wealthiest people in the United States pay. The article goes on to explain that one of the major reasons these individuals pay so little in taxes is that they continue to hold on to their capital assets so no tax is due even though their net worth continues to grow. This article seems to implicitly support President Biden's proposal on taxing capital gains at death. While it may make sense to tax these gains for the wealthiest of all Americans, it certainly should not apply to small business owners, farmers and ranchers who year in and year out pay their fair share of taxes and then would get hit with an additional new capital gains tax at death or when removing assets from a partnership. At a minimum there should be a step up in basis of assets equal to the then current estate tax exemption. SSDA will be working hard to educate members about the impact that new capital gains taxes would have on small businesses and advocating that small business owners, farmers and ranchers not be swept up in an effort to tax the ultra-wealthy.

Despite pressure, the proposed budget does not eliminate the $10k cap on deductions for state and local taxes. A number of Democrats, particularly from those states with high state and local tax rates, have been placing serious pressure on the White House to include the elimination of the SALT cap in any proposal as a condition of garnering their support.

Again, the President's budget is just an initial shot across the bow when it comes to what ultimately might end up in the appropriations and related bills. However, now that these options have been laid on the table, it would be a mistake not to take them seriously. With the same party in control of both sides of Pennsylvania Avenue, there is a much greater chance of things moving, and quickly, than there has been in prior years. We encourage our members to keep us apprised of their priorities and concerns throughout.

April US Vehicle Miles Down 9% vs 2019; Trend Weakens vs March: US DOT Data

Total U.S. vehicle miles in April 2021 were around 9% lower than 2019 levels, widening their two-year deficit versus March's when the indicator showed significantly more motorists travelling on U.S. roads, according to the latestTraffic Volume Trends data compiled by the U.S. Department of Transportation's Federal Highway Administration (FHWA).

Total April U.S. vehicle miles, which measure travel on all public roads and streets, totaled 256.5 billion, which were 8.9% below the 281.6 billion in April 2019, according to FHWA data.

April's two-year deficit was also wider than that of March, when it was only down 3.3% versus the same month in 2019.

According to OPIS DemandPro data, U.S. average gas station gasoline volumes in April 2021 on a same-store basis were down 13.8% versus two years ago, however, there was a narrower two-year gap for April versus March's 16.7% deficit.

Market watchers said the latest Traffic Volume Trends data for April was negative despite apparent improvement in gasoline demand as COVID-19 vaccinations kept rising and most U.S. states have relaxed capacity restrictions.

Energy analysts at investment bank Tudor, Pickering, Holt & Co. said in a Friday note that vehicle miles trends at the most populous U.S. states including Texas, Florida, California and New York have all weakened in April versus March.

Still, April's total U.S. vehicles miles were above their 10-year average for a second consecutive month, the bank said.

"Looking ahead, a busy summer driving season is expected with 45% of the population now fully vaccinated and restrictions easing rapidly, with the recovery evident in several real-time demand indicators," the U.S. bank said. "However, higher prices at the pump (five-year highs) could pose some headwinds."

Traffic Volume Trends is a monthly report based on hourly traffic count datacollected at about 5,000 continuous traffic-counting locations nationwide and submitted by all 50 states, according to the FHWA.

--Reporting by Frank Tang,

Colonial CEO Says Poor Password Practices Led to Ransomware Attack

Poor password security practices allowed hackers into the Colonial Pipeline computer system, leading to the ransomware attack that shuttered the pipeline and caused fuel shortages throughout the Southeastern United States, Colonial's CEO said during a hearing with federal lawmakers Wednesday.

Testifying before the House Committee on Homeland Security, Colonial CEO Joseph Blount said it appeared a Colonial employee used the same username and password on at least one other internet site. Hackers got the information from one site and then used it to gain entrance to a Colonial virtual private network (VPN) that the pipeline company thought was no longer in use, Blount said. The so-called legacy VPN did not require a second form of authentication, such as entering a PIN number, that is now recommended as a standard security practice, Blount said.

"We had cyber-defenses in place, but the unfortunate reality is those defenses were not enough," Blount said.

Blount said that while Colonial has continually upgraded its cyber security operations, the company has had to make a "substantial" investment in security following the attack, as hackers had access to the system and now know its vulnerabilities.

"We have been compromised. We have had criminals in our system," he said, adding that the company was willing to provide whatever resources its staff identifies as being needed to harden the system against future attacks. He said the company has spent about $200 million on its IT system over the last decade, including funds for cyber security.

When asked what kind of changes Colonial is making, Blount was unwilling to share the information publicly, saying, "We are doing a lot of things differently, but don't want to give a roadmap to a criminal actor who might want to get in."

Blount also did not identify the employee whose password was compromised. The password that was hacked "was not a common password, or easy password" and met the security standards for password protocols. He said that while the company screens itself for cybersecurity vulnerabilities, the problem with the VPN network was not identified because the company did not think it was still in use. Cyber security experts recommend strict password measures, including using unique passwords. But Blount acknowledged that it is not unusual for people to use the same password across multiple sites, another factor unlikely to be identified during a security screening.

During the hearing, lawmakers alternately expressed outrage that Colonial's cyber defenses were able to be breached and asked what steps the CEO thought were needed to prevent similar attacks on other critical energy infrastructure.

Blount also told committee members that the United States needs to do more to pressure countries, such as Russia, to crack down on hackers operating within their borders.

"Approach the host, put political pressure on them to stop it before it starts," he said.

The CEO gave members of the house committee a timeline of the attack, saying a Colonial operator identified that the system was under attack at about 5 a.m. on May 7 and that the decision to shut the pipeline system was made within an hour. The company contacted the FBI early the same morning and made the decision to begin negotiating to pay the ransom in the late afternoon. The company paid the $4.4 million ransom on May 8 but did not discuss with federal officials whether or not they should pay it, he said. Blount defended the decision to pay the hackers, saying he put the interest of the country first.

"I believe with all my heart it was right decision to make," he said.

While Colonial began working with the White House and a variety of federal agencies shortly after recognizing it was under attack, it did not inform the FBI that it had paid the ransom until two days after the payment was made. Blount defended the secrecy, saying he had been concerned about "operational security."

Blount said Colonial also worked with law enforcement as it attempted to recover the ransom paid to the hackers. On Monday, the U.S. Department of Justice announced it had recovered bitcoin worth $2.3 million, which it said was part of the payment Colonial had made. The 63.7 in bitcoins recovered by federal officials is a lion's share of the 75 bitcoins Colonial reportedly paid. The value of bitcoin, like stocks, vary from day to day. Blount said the company has filed a claim with its cyber insurance company for the ransom and expects it will be paid.

The 2.5-million-b/d Colonial Pipeline provides about 45% of the fuel used on the U.S. East Coast, carrying refined productions from Texas to the Northeast and metropolitan areas along the Eastern Seaboard. The pipeline was shut down May 7 after the operator said its business systems were hit by a ransomware attack, and Colonial announced a restart of pipeline operations six days later in the afternoon of May 12.

--Reporting by Steve Cronin

Ransomware, Phishing Globally Affecting Energy Business: Report

During the COVID-19 pandemic, phishing email attacks and ransomware incidents were among the top data breach methods and had the most impact on the oil and gas industry globally last year, according to the recently released 2021 Verizon Data Breach Investigations Report.

Downstream in the retail fuel and food service businesses, system intrusion, social engineering -- including phishing -- and web application attacks, in which criminals exploit weaknesses in applications, were the primary methods for breaches in 2020, Verizon found.

Payment-card skimming, which has been on the decline in recent years, has dropped sharply during the pandemic along with the decrease in vehicle traffic, the report said.

Across industries, phishing was involved in 36% of data breaches, up from 25% the prior year. And ransomware was involved in 1 of 10 of all breaches, more than doubling its frequency from the prior year, Verizon said.

"Payment card skimmers, crimeware, cyber-espionage and point of sale are the 'most valuable players' retired to make room for a couple of seasoned minor league patterns ready for the big leagues: social engineering and system intrusion," the report said.

For the oil and gas and utilities industries, social engineering dominated breaches and incidents this year, "with sustained phishing campaigns occurring against some organizations." Social engineering in which criminals manipulate people into compromising information accounts for 86% of the breaches. The next most common type of attack in the industry is ransomware, which accounts for 44% of the attacks.

The data most often compromised were credentials (94%), personal information (7%) and internal information (3%), the report said.

Downstream in the retail business, system intrusion, social engineering and web application attacks represent 77% of the breaches. Most of the threats were from outside the organization, and the data most often compromised are payment information (42%), personal information (41%) and credentials (33%), the report said.

Most commonly, criminals used stolen credentials to install malware and capture application data. Other frequent schemes involved social engineering through phishing and pretexting, in which the attacker invents a scenario to dupe employees, for example, to wire money, Verizon noted.

The annual data breach report used to devote much analysis to payment card skimmers, "but they (skimming incidents) have been decreasing dramatically in our dataset over the years," Verizon said.

"This year we saw an even sharper drop-off than ever before. There were only 20 skimming incidents (all confirmed breaches) in the dataset this year. We attribute this decrease, at least in part, to the travel restrictions related to COVID-19," the report said.

In past years, "We saw evidence of skimming groups from abroad coming into the U.S. and installing skimming devices on their infrastructure of choice (somefavor ATMs, some focus on gasoline terminals). In fact, one could almost plot their progress along the major routes before they would presumably return to their place of origin along with their stolen data," Verizon said. "Given the travel restrictions that began in March 2020, the freedom to carry out this type of concentrated raid has significantly diminished. And while its possible that this kind of breach is no longer being tracked at the national level, we like to think there is at least one positive outcome from what has been a very difficult year for most of the world."

In its report, Verizon analyzed 79,635 incidents, focusing on 29,207, of which 5,258 were confirmed data breaches. The study covers information from 88 countries around the world.

--Reporting by Donna Harris

Citi Sees Potential for 2H 2021 RIN Price Plunge

Analysts at Citi Research told clients today that they believe the "extremely elevated" Renewable Identification Number (RIN) price environment buttresses the case for the Environmental Protection Agency to take actions that might slice half of the worth of D6 ethanol RINs later in 2021.

The high numbers could lead EPA to take steps to ensure an adequate carryover bank of RIN credits, which would serve as a market "buffer," Citi suggests. Hardship arguments led by merchant and small refiners could also get EPA attention.

But the bank does not believe that the U.S. will go back to the days of 10-35ct ethanol RINs that represented the norm for most of 2018, 2019 and 2020. They do see the possibility of $1 D6 RINs, however.

Months ago, Citi was bullish on RINs and set what was then an out-of-consensus bullish target of $1.50 and higher. The bank recognizes three key factors that are behind the RIN spike: 1) a low outright level of RIN generation; 2) uncertainty about Biden administration policy on 2021/2022 Renewable Fuel Standard (RFS) requirements and the Supreme Court's eventual decision on small-refinery exemptions; and 3) high feedstock costs for corn and soybean oil.

The bank notes that nearly $9/bbl of the RBOB crack versus Brent could be attributed to RIN cost components.

Citi concludes that the recent price strength is unsustainable and believes sub-$1 E21 RINs could occur in the fourth quarter. Analysts believe that an outright and perhaps steep cut in RVOs to actual blending levels is becoming a more plausible possibility, particularly against the backdrop of the highest retail prices since the first half of 2014. The politics of "relaxing the 2021 RFS" may be one path the White House chooses to cool fuel price inflation.

--Reporting by Tom Kloza,

CITGO Agrees to Pay Nearly $20M for 2006 Lake Charles Refinery Oil Spill

CITGO Petroleum Corp. has agreed to pay $19.69 million to resolve claims of natural resource damage related to a major oil discharge from the wastewater treatment facility at its 440,000-b/d Lake Charles refinery into the Calcasieu River in 2006.

The U.S. government and Louisiana concurrently filed a civil complaint along with a proposed consent decree, claiming that "CITGO discharged millions of gallons of waste (slop) oil and oily wastewater from two ten-million-gal storm surge and wastewater tanks" at the Lake Charles refinery's treatment facility, the Department of Justice (DOJ) said in a statement Thursday.

A consent decree is a court-supervised order based upon an agreement between the parties to a lawsuit that resolves a dispute.

According to the DOJ, about 150 miles of shoreline "were polluted with CITGO's oil, including residential and marsh areas. The discharged oil killed birds and fish and other aquatic life, contaminated aquatic and shoreline habitats, forced the closure of the ship channel, and disrupted recreational uses of the impacted river and lakes," according to the DOJ statement.

"While oil and gas producers are a major source of employment in Louisiana, they have a sacred obligation to protect our environment and use our resources wisely," said U.S. Attorney Alexander Van Hook for the Western District of Louisiana. "This settlement sends a clear signal that those who pollute our environment will be held accountable."

A CITGO spokesman said in an emailed statement that the company is pleased to reach the voluntary settlement with federal and state agencies to fund environmental restoration planning and projects as a result of the 2006 spill at its Lake Charles, Louisiana, refinery.

"We promptly responded to the spill, invested significant resources to implement early restoration, and assisted the (federal and state) trustees with evaluating the impacts. Additionally, we made significant improvements in our plant, policies and procedures to prevent this type of event from happening again," the CITGO spokesman said.

DOJ said the complaint sought money damages under the Oil Pollution Act and the Louisiana Oil Spill Prevention and Response Act.

Of the $19.69 million that CITGO is required to pay under the consent decree, "$19.16 million is for natural resource damages for the spill, which the federal and state trustees will jointly use to plan, design and perform restoration projects to compensate for the harms caused by the oil spill," according to the DOJ.

"The consent decree also secures payment from CITGO for the trustees' remaining unpaid injury assessment costs, which total over $528,000," according to the statement.

The statement adds, "In an earlier related Clean Water Act enforcement trial spearheaded by the United States on behalf of the Environmental Protection Agency, the district court determined that the cause of this avoidable disaster was CITGO's gross negligence in the operation and maintenance of its wastewater treatment facility and the lack of adequate storage and treatment capacity.

"CITGO had been improperly using the tanks to accumulate oil, sludge and oily wastewater at its treatment facility for years," DOJ said.

"Due to the lack of proper operations and the inadequate storage and treatment capacity at the facility, the tanks overflowed during a rainstorm. At least 54,000 barrels of slop oil (2,268,000 gallons) and untold millions of gallons of oily wastewater breached the faulty secondary containment berm around the tanks and flowed into the waterways, including the adjacent Indian Marais waterway, the Calcasieu River and the Calcasieu Estuary," according to the DOJ.

According to the DOJ statement, said the federal court found that CITGO "does not appear to have recognized the importance of compliance, pollution control, environmental responsibility, and the overall duty imposed on businesses to operate safely."

The court also found that CITGO's oil spill was "massive, excessive, and a tragedy" and that CITGO "failed to inform the Coast Guard of the true nature of the incident," according to the DOJ statement.

The DOJ said, "CITGO was ordered to perform substantial corrective actions to improve its wastewater treatment facility's storage and treatment capacity and operations, to pay a state penalty of $3 million to the Louisiana Department of Environmental Quality for the discharge and chronic violations of the company's discharge permit, and to pay a federal Clean Water Act civil penalty of $81 million. Under a separate criminal plea agreement, CITGO paid a $13 million criminal fine."

"The proposed consent decree is subject to a 30-day public comment period and court review and approval," according to the statement.

--Reporting by Frank Tang,

Supreme Court Rejects Challenge to FDA's Vaping Regulations

The Food and Drug Administration's (FDA) regulation of electronic cigarettes and vapor products has withstood a legal challenge at the highest level.

On June 7, the U.S. Supreme Court said it would not hear the case of a Mississippi vape shop, Big Times Vapes Inc., and the United States Vaping Association, which called into question the FDA's regulatory authority over e-cigarettes and vapor products.

A federal district court and U.S. Court of Appeals for the Fifth Circuit previously ruled in the agency's favor. On appeal, the Big Times Vapes and the industry association sought to invoke the so-called non-delegation doctrine, a constitutional rule that says Congress must give clear guidance to an agency before handing off its legislative responsibilities, according to Bloomberg.

The Supreme Court has not invalidated a law as an unconstitutional delegation since 1935, it added.

Congress granted the FDA regulatory authority over tobacco products when it passed Family Smoking Prevention and Tobacco Control Act of 2009. The agency laid the foundation for regulating all tobacco products, not just cigarettes and smokeless tobacco, when it implemented its final deeming rule in 2016. That rule extended its authority to e-cigarettes, cigars, hookah tobacco and pipe tobacco, as Convenience Store News previously reported.

In their appeal, Big Time Vapes and the United States Vaping Association said Congress violated the Constitution by giving the FDA such an open-ended grant of authority.

The Biden administration urged the Supreme Court to reject the appeal. It said Congress made clear that the FDA should comprehensively regulate the tobacco industry to protect the public, particularly children, from nicotine dependence, health risks, and false or misleading advertising, the news outlet reported.

Pennsylvania C-Store Owner
Pleads Guilty to Food Stamp Fraud

The owner of an Erie, Pennsylvania, convenience store Tuesday pleaded guilty in federal court to conspiring to defraud the United States and to food stampfraud, according to an announcement from the U.S. Attorney's Office for the Western District of Pennsylvania.

Abdul Alquraishi, 54, owner and operator of The Lotto World, along with three co-defendants, allegedly exchanged food stamps for cash and allowed customers to pay off store credit with food stamps. Alquraishi also used customers' food stamp cards to buy items at various stores in the area, the announcement said.

The court set sentencing for Nov. 22, and the sentence could carry up to a 10-year prison term, a fine of $500,000 or both, the U.S. attorney's office said.

--Reporting by Donna Harris

DMV US Trucking Activity Falls in May Despite Rising Gasoline Demand, Group Says

Trucking activity in the United States saw a slight decrease during the month of May, despite increased demand for gasoline and continued strength in retail sales, according to data released Tuesday by the nation's largest trucking industry trade group.

The American Trucking Associations said its advanced seasonally adjusted (SA) For-Hire Truck Tonnage Index decreased 0.7% in May. That decline comes on theheels of a 0.6% decrease in April.

Activity, however, is well above levels seen during the same time last year, though ATA Chief Economist Bob Costello warned that the trucking industry continues to face challenges as it attempts to shake off the impacts of the COVID-19 pandemic.

"As has been the case for some time, trucking's biggest challenges are not on the demand side, but on the supply side, including difficulty finding qualified drivers," Costello said. "One freight segment that is helping tonnage is gasoline as demand for travel, both commuting and vacation related, picks up," he said. "I'm also expecting retail freight to remain robust as inventories are at historic lows. As retail stocks are rebuilt, it will boost freight."

As OPIS reported in April, the industry has been facing a driver shortage that could impact gasoline supply in some areas during the summer. Hundreds of transport truck drivers were either laid off or found alternative driving gigs when the pandemic cut demand by as much as one-half last year, and many have not been replaced.

ATA's For-Hire Truck Tonnage Index is dominated by contract freight as opposed to spot market freight.

ATA, which represents a coalition of industry groups, says trucking serves as a barometer of the U.S. economy, as it represents 72.5% of tonnage carried by all modes of domestic freight transportation, including manufactured and retail goods.

--Reporting by Steve Cronin

Record Retrieval

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