

TRANSTRENDS



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FUEL LINE

Each issue we will feature as the first item the **FUEL LINE** which will alert you to those states that are planning tax increases, toll hikes and other fees.

It has been difficult for state legislatures to enact fuel tax increases due to the unstable cost of fuel. To put a higher tax on a product that fluctuates frequently is very unpopular, politically.

However, many jurisdictions are taking a different approach and we are seeing a lot of states considering putting in tolls where tolls have never been. The money is needed for highway construction and repair and of course the graft that is needed for all of the "hanger-ons" to unjustly enrich them. We know that we sound cynical at the Translaw Group but when was the last time a politician disappointed us by doing the wrong thing!

NO SKID ZONE

Bill O'Reilly may have the "No Spin Zone" but the Translaw Group has the "No skid Zone". Each issue will highlight the absurdity of a particular rule, regulation, law or government action that just doesn't make common sense.

BATTLE CONTINUES AS MORE POLITICIANS FIGHT U.A.E. PORT CONTROL PLAN

The fight about a Middle Eastern company controlling six major U.S. ports was taken to the executive level on Wednesday, Feb. 22, as President Bush vowed to veto any measure Congress might pass to try and stop the deal from going through.

The furor erupted early in the week of Feb. 12 when it was announced that a company owned by the country of United Arab Emirates – Dubai Ports World – had been cleared to acquire the British firm Peninsular and Oriental Steam Navigation Co.

The deal would give Dubai Ports World control over the management of the ports of New York, New Jersey, Philadelphia, Miami, Baltimore and New Orleans. Since then, both Republicans and Democrats have blasted the deal and talked about possible legislation that would stop it from happening.



The Associated Press reported that Bush, who has yet to veto a bill, defended the deal as the administration disclosed some of the requirements Dubai Ports World would have to meet. For example, the company would be required to participate in U.S. security programs designed to stop smuggling and detect illegal shipments of nuclear materials. The AP reported that about 33 other port companies participate in these programs voluntarily.

But that hasn't been enough to satisfy the deal's harshest critics. Rep. Pete King, R-NY, chairman of the Homeland Security Committee, told The AP that Bush's veto threat would not deter any attempts at legislation. "I will fight harder than ever for this legislation," he said. "And if it is vetoed, I will fight as hard as I can to override it." The AP reported that King and Sen. Charles Schumer, D-NY, are planning to introduce emergency legislation aimed at suspending the deal. The legislation has gotten support from both sides of the political fence. Sens. Bob Menéndez, D-NJ, and Hillary Clinton, D-NY, have supported the idea of a bill, as have Senate Majority Leader Bill Frist, R-TN, and House Speaker Dennis Hastert, R-IL.

According to the Congressional Quarterly, the Bush administration officials will brief a "friendly Senate committee" on the deal in a public session Thursday, Feb. 23. And Teamster's Union president James Hoffa is calling on Congress to ignore Bush's veto threat and block the port deal. In a press release, Hoffa said, "This is yet another example of President Bush's corporate agenda gone wild."

We at the Translaw Group find it interesting that Bush publicly on February 22 announced that he only recently heard of the deal. It would seem to us that he should have been in on this from the beginning. It would be interesting to get answers to the same old questions – when did you first hear of the deal? And who have you talked to concerning the deal? Then we will find all of the hidden emails and memos hit the proverbial fan.

BOARD: "FEDEX TRUCK DRIVERS ARE EMPLOYEES"

The National Labor Relations Board has ruled in favor of 23 truck drivers in Massachusetts who filed a case against FedEx Home Delivery in a dispute about their employment status. The FedEx

division exercised control over the contractors' performance, according to the NLRB decision. Therefore, the truckers should be considered employees and not independent contractors.

As employees, the truck drivers now have access to company perks and the right to vote on whether to join a union – something that FedEx did not want to see happen! The Boston Globe reports that the company plans to appeal the NLRB decision.

CONNECTICUT ATTORNEY GENERAL WANTS “HALL OF SHAME”

Connecticut Attorney General Richard Blumenthal is calling for the creation of a statewide “Hall of Shame” that would post every safety violation logged against every commercial trucking operation in the state online. The Associated Press reported that Blumenthal asked for the Web site as part of Connecticut's crack down on truck safety violators following a 2005 fatal wreck on Avon Mountain at the intersection of Route 44 and Route 10. Blumenthal said he wanted to make that information available to consumers to allow them to make informed choices and to urge individuals and businesses to shun the worst offenders, according to The AP. Sounds like a throwback to the days of the town common and the stocks!

TOLL RETURN A POSSIBILITY FOR CONNECTICUT

Top House Democrats in Connecticut said last week that all options – including reviving tolls and increasing fuel taxes – are on the table to fully fund a plan to alleviate the state's traffic problems.



House Speaker James Amann, D-Milford, said the state would likely need \$6 billion to \$7 billion to pay for a 10-year plan drafted by the state Transportation Strategy Board in 2003.

Recommendations include widening Interstate 95 from Branford to the Rhode Island line, improving Interstate 84 from Danbury to Waterbury, more rail trips to New York, and adding a commuter rail line from New Haven to Springfield, MA. Proposed funding for the Democrats' plan includes: bonds; part of a \$537 million state surplus; tolls; or an increase in the state's fuel tax.

Drivers were freed from paying to use Connecticut highways in 1985 after accidents near tollbooths raised safety concerns. Critics also pointed out the original purpose of the tolls were to pay off the cost of construction – a task that had been achieved. Amann said he would prefer not to bring back tolls but would not rule it out and he further stated that the state might consider an electronic toll system. Legislators first would need to ensure tolls would not jeopardize federal highway funds.

One would think that Connecticut officials would have learned from history that toll booths of the type used by Connecticut were dangerous and outdated in 1985 and there doesn't seem to be any more room for the booths some 20 plus years later. Toll collectors will not alleviate traffic congestion; rather, it will increase congestion on 1-95.

OIDA CHALLENGES HOURS OF SERVICE

The Owner-Operator Independent Drivers Association (OOIDA) has officially filed a petition for review of the current hours-of-service regulations. The Association filed its petition with the U.S. Court of Appeals for the District of Columbia Circuit Monday, Jan. 23. Initially, the Federal Motor Carrier Safety Administration denied OOIDA's Petition for review of the regulations by the agency.

OOIDA feels that the FMCSA made substantial errors in the way they implemented the split sleeper-berth provisions. OOIDA feels that the agency did not adequately research the issue of the sleeper berth provision that justify the current regulation. The current regulations are set up in a way that if a driver chooses to split up the required 10 hours of off-duty time, one of the two periods must be at least eight hours. That eight-hour rest period stops the 14-hour on-duty clock. The other two off-duty hours can be taken at another time – either in the sleeper or out – to fulfill the 10-hour off-duty requirement, but they do not stop the 14-hour clock.

Despite the encouragement in the rulemaking for drivers to take advantage of the opportunity for a nap or short rest period, the fact that the two-hour break does not stop the 14-hour clock is a disincentive for drivers to utilize the break as contemplated by the FMCSA. OOIDA is simply asking that those two hours would also stop the clock, which the driver could take that time period off-duty and not count against his working time. OOIDA has stated that it is commonsense because it's consistent with the 10-hour off-duty requirement.

The other change OOIDA petitioned for before the agency involved split sleeper-berth provisions for team drivers. Under the current HOS regulations, team drivers have to take a minimum of eight consecutive hours off in the sleeper berth. OOIDA feels that the eight hour provision is impractical for most team operations. And, OOIDA seeks in its court challenge that the DOT retain the current sleeper-berth exemption, which allows the drivers to take sleeper-berth time in whatever increments they want, as long as no period is less than two hours."

FMCSA denied OOIDA's petition for reconsideration in a Dec. 5, 2005, letter, leaving the Association no other choice but to take its challenge of the HOS regulations to the U.S. Court of Appeals. OOIDA spokesman Jim Johnston stated "we intend to press our case very aggressively with the court and hope the court will agree with us." And OOIDA most likely will not be alone in its challenge of the hours-of-service regulations.

OOIDA expects other industry interests joining with them in this case. The California Trucking Association has already indicated that they would like to piggyback on the suit since they were not allowed to file a suit on their own due to procedural issues. A diverse cross section of trucking interest may ultimately join the OOIDA in its efforts which will certainly make for a strange looking coalition.

NEW REGULATIONS SLATED FOR 2006

The Federal Motor Carrier Safety Administration (FMCSA) is expected to issue several important new regulations in 2006. The Feds have a very ambitious agenda.

Among the expected rules are...

- Intermodal chassis maintenance rules.
- Electronic on-board recorder usage.
- Unified registration system for carriers. This regulation is expected to have a major impact on fleets, both for-hire and private, and may also have an impact on shippers as well. This rulemaking has been in the works for 6 plus years.
- Commercial drivers learner permit regulations.
- New regulations covering medical exams, medical examiner credentials and a tie-in with the commercial driver license regulations.

The Translaw Group will post all new regulations in the monthly newsletter, TRANSTRENDS, and will issue TRANSLAW ALERT notices on our web site at www.transregs.com as the rules are released by the FMCSA.

EORB REGULATIONS ON HOLD UNTIL SPRING '06

The Federal Motor Carrier Safety Administration (FMCSA) has delayed for four months the release of the long anticipated regulations governing the use of electronic on-board recorders (EORB). The recorders would replace paper driver logs in monitoring the hours-of-service compliance.

It will not be clear whether the FMCSA will mandate use of EORBs or offer incentives to fleets that use EORBs until the final rule is published. The EORB rule making procedure was initiated after a Federal court vacated the hours-of-service rules that went into effect in January 2004. The court faulted the FMCSA for not considering EORBs in the original rules. To further complicate the EORB ruling the FMCSA will soon be issuing rules mandating precisely what documents must be maintained as back-up to the driver log including the EORB and other electronic devices that track vehicle movement.

It is expected that any rules mandating EORBs will most likely be met with court challenges. Further, rules of this type generally have a multiple year phase-in period that will accommodate different types of fleets.

THEY CAN'T DO THAT, CAN THEY?

You bet they can and they have. It may not seem fair but other states can tax your business even if you only make a delivery or two in that state each year! We are talking about New York, New Jersey and Pennsylvania in particular; however, almost all states have similar tax regulations on



the books but may not be as active as the above named states in their enforcement actions. In fact, we just learned that Connecticut is pursuing carriers in a similar nature. So much for neighborliness.

It was in the days of James Madison that he saw the need for relief that allowed the free flow of commerce free from undue taxation,

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interruption of the flow of commerce and arbitrary regulations. The Commerce Clause was born by the Continental Congress to address these very issues.

The Commerce Clause is more than an affirmative granting of power it additionally has an inverse side know as the Dormant Commerce Clause. The Dormant Commerce Clause prohibits certain state action that interferes with interstate commerce originally the Supreme Court saw the Dormant Commerce Clause as prohibiting any form of state taxation on interstate commerce. This was stated in ***Leloub v Port of Mobile 127 U. S. 640, 648 (1888)*** (stating that “No state has the right to lay a tax on interstate commerce in any form). Strong language, but soon to fall.

On might think that standard is still in effect, however, the courts began to change the standard by allowing certain indirect “burdens” on interstate commerce without totally destroying the prohibition. This action began in the late 1890’s and early to mid 1900’s.

What we have today is a scheme that allows for taxation of interstate commerce when there is a showing of a substantial nexus. And, in recent years the standard for “substantial nexus” has eroded to the point that a single shipment is enough to trigger the particular states taxation laws. The only good news is that not every state is as aggressive as other states such as Pennsylvania, New York and New Jersey. Many carriers see the occasional property rendition tax forms that yield little tax such as Arkansas, Kentucky and Kansas. But as states seek new revenues you can expect to see a more aggressive stance towards such taxation.

RANSOM: The three states mentioned above are very aggressive in assessing business tax and, in fact, New Jersey is so aggressive that they will even impound your vehicle until you pay them a “ransom” to release your vehicle and you still have to make the necessary tax filings. You may find that the ransom was much more than the actual tax and you will have a difficult time trying to get the balance back, if ever.

In 2002 more than 6.2 trillion dollars worth of goods moved by truck. That a lot of money ripe for opportunistic taxation. Add to that figure the fact that 221 billion dollars was generated in carrier operating revenue and employed some 3.1 million truck drivers. All of which are potentially subject to some type of taxation as the truck rolls.

As previously stated the Dormant Commerce Clause was slowly eroded during the first part of the 1900’s. It was in 1977 in ***Complete Auto Transit, Inc v Brody 430 U. S. 274 (1977)*** that the courts brought the Dormant Commerce Clause and due process considerations together. Under the Complete Auto case a tax will be sustained if it is

- Applied to an activity with a substantial nexus with the taxing authority.
- Is fairly apportioned.
- Does not discriminate against interstate commerce
- Is fairly related to the services proved by the state.

The states that do enforce the collection of such taxes have obviously made sure they are in compliance with this 4 prong test. Routinely we see various trucking interests fighting the imposition of new taxes if they are not in compliance with the above test.

Motor carriers can be subject to as many as 6000 taxing jurisdictions. The motor carrier industry as a whole has been on the front line fighting efforts to place additional tax burdens on carriers.

The case that probably best explains the current climate and the aggressiveness of Pennsylvania, New Jersey and New York was a 1948 case, **Central Greyhound Lines, Inc. v Mealy** when Central Greyhound was assessed taxes for all gross receipts on a trip that originated in New York but traversed New Jersey and Pennsylvania and back into New York on the way to Buffalo. Greyhound Central argued that PA and NJ wanted their portion of tax as well and that only 57 percent of all miles were actually in New York. New York wanted all of the tax!

THE SOLUTION: There is no solution other than to fight each new tax. Changing existing laws to eliminate these taxes would certainly not be met well by the individual states. However, Pennsylvania and New Jersey offer an amnesty program that will enable a carrier to avoid the unpleasantness of an impoundment while avoiding the unreasonable ransom. The program allows the carrier to come forward, file documents and determine what taxes are due. The carrier is given an opportunity to file the appropriate tax filings and not be stopped in a routine highway check and then be impounded.

With the warm weather approaching carriers should be warned that these states will be on the lookout for carriers who are not paying tax. In some instances the state will hire independent companies that handle the "on the road" activity and they only get paid when they stop a truck. They don't let you off because then they won't get paid. Call the office for more information on the various amnesty programs that are available at this time. That is your best course of action. Keep in mind that with the warmer weather ahead, the states will be doing their road-side tax inspections and they can be financially painful!

IMPORTANT DUE DATES - TAXES

Please make a note, mental or otherwise, of the following important due dates concerning taxes.

STATE	TAX TYPE	DUE DATE
Massachusetts	ST-10 Excise Tax MA Pike Miles	April 15, 2006
New York	CT-5 Estimated Tax filing and request for extension	March 15, 2006
New York	CT-3 final return	September 15, 2006
Pennsylvania	REV-853 Estimated Tax filing and request for extension	April 15, 2006
Pennsylvania	RCT-101 final return	October 15, 2006
New Jersey	Cbt-200 T Estimated Tax filing and request for extension	April 15, 2006
New Jersey	CBT-100 final return	October 15, 2006



You may be operating in additional states that also have a tax filing obligations. Please call the office for a more exhaustive listing of state tax filing obligations.

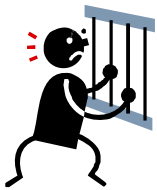
The more common obligations have been listed for your information. You may have your tax professional call for more details if you wish.

BROKERS TO FACE HIGHER BOND IF OOIDA IS SUCCESSFUL

The Owner operators Independent Driver's Association, (OOIDA) has filed a supplemental petition to help inspire the Federal Motor Carrier Safety Administration FMCSA to take action on raising the bond amount for property brokers. Currently, a bond of \$10,000.00 is required to be on file with the FMCSA. If OOIDA is successful in its endeavor the bond amount will go up to \$300,000.00, a healthy amount for sure. Expect to see the FMCSA take some kind of action in raising the bond limit however, it will be an amount far less than 300 G's.

DRIVER GETS GO TO JAIL CARD

Two time loser Chad J. Zufall was sentenced to 2 years of probation and fined a paltry \$750.00 for his second finding of guilty for falsifying drivers' logs.



His first offense in 2000 resulted from an accident in which Mr. Zufall's rig rear ended a car killing four persons in that vehicle. Mr. Zufall apparently knew he was in trouble at the accident scene and had the presence of mind to destroy his log book. He got off very lightly for the first offense.

Lucky Chad, in that he only got 2 years of probation and a small fine for his second offense. It's tough to learn a good lesson.

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