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New Administration Brings Potential Changes

With the focus of the media wrapped up in the current economic conditions, the promises, opinions, and agendas of the not-so-distant presidential race are a faded memory. But are they forgotten?

The following are proposals expected to be pursued by the Obama Administration.

Potential Spending

There are many hot topics and much discussion about legislation needed to lead this country back to financial prosperity. With the new Congress and President proposing a bold stance on Government spending rivaled only by FDR, there may be some interesting opportunities for the construction industry as a whole.

There is proposed spending on roads, bridges, sewers, drainage, clean water, schools, hospitals, waterways, and ports. Some say that a portion of a national infrastructure investment and economic recovery plan could be placed on the new President's desk as early as the day of his inauguration. The State of Michigan is excited about the opportunity to get their hands on these funds with the State's first blush at federal funding requirements estimated to be \$17 billion. The State could have contracts ready to go by the end of the first quarter if the funding is approved.

Card Check Bill

While the economic stimulus package has everyone talking, the one piece of legislation that has everyone taking a side is the Card Check Bill.

The principle purpose of the Card Check Bill, as acknowledged by both sides, is to make it easier for unions to organize. Under current law, a union that gets 30 percent of the employees in a bargaining unit to sign an authorization card has the right to have the Federal National Labor Relations Board hold a private ballot election to determine whether to certify the union. This process considers the interests of employees, unions, and employers, and allows workers to hear all sides and then make up their minds and vote in private.

Union density has dropped to very low levels, and as such, organized labor is lobbying in favor of this bill to change the rules and make it easier to organize. The Card Check Bill would do just that.

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Instead of determining whether a union would be certified through a federally-supervised secret ballot election, the union would be certified the moment it collected a majority of signed authorization cards. Therefore, the Card Check Bill would eliminate the campaign period and the legal requirements that regulate it, leading up to the secret ballot election. Instead, employee decisions on unionization would be made in front of union organizers, which opponents say greatly increases the opportunity for coercion and pressure in the union organizing process. Supporters say that company intimidation has for years denied millions of workers the opportunity to form a union. The secret ballot is still an option under the bill that companies can elect through certain circumstances. Nonetheless, this change would eliminate years of legislation, labor laws, and federal court decisions.

A secondary and lesser known portion of the bill is to amend collective bargaining law so that when a union is recognized for the first time and the union and the employer cannot meet an agreement within 90 days, the matter would be sent to mediation. After 30 days of mediation, government arbitrators would be brought in to set the terms and conditions of the union contract. Currently, the law requires that the parties bargain in good faith and recognizes that the union, representing workers, and the employer are in the best position to determine whether an agreement is acceptable and whether compromising on one goal in order to achieve another is acceptable. The Card Check Bill's mandatory interest arbitration provisions would remove any incentive for the employer or the union to adopt realistic bargaining positions, as each would be posturing for the arbitrator, and would give the arbitrator control of the most basic business decisions. It would also deny both the employees and companies the right to agree on ratification of the contract.

The Card Check Bill was blocked in the Senate in 2007, but it is no secret that it will be a top legislative priority in

2009. And, with the balance of power making a change, it could be one of the first major pieces of legislation for the new administration.

Introduction of a Tax Bill?

Although President Obama spoke at length about his tax ideas, there may be a bit of a delay before they make it to the Senate floor. It is anticipated that the tax plans will be put on hold for an economic rebound. Following are a couple of potential agenda items you might see:

Individual Rates. President Obama has indicated that it is his intention to raise the individual income tax rates to their pre-2001 levels of 39.6% and 31%. In addition, he plans to raise the capital gain rate to 20%. There is an indication that he would leave the dividend rate tied to the capital gains rate, as it is now, but would reinstate the personal exemption and itemized deduction phase outs.

Social Security Payroll Tax. Under current law, the first \$102,000 of income is subject to payroll taxes. Obama proposes that the tax would remain on income up to \$102,000 at the historical rate of 12.4%. His plan would then exempt income between \$102,000 and \$250,000, and all income over \$250,000 would be subject to payroll taxes at a reduced rate. This rate could be between 2-4% and would be split by the employee and the employer. This new rate levied on the highest income tax payers in addition to the income tax rate could result in a combined rate exceeding 45%.

Other. While President Obama does favor making the R&D tax credit permanent, and extending the AMT patch, he is not in favor of eliminating or reducing the estate and gift tax of 45%.

It is stacking up to be an interesting first quarter for the new President, with some important decisions to be made early on, and some exciting opportunities for Michigan's construction industry hopefully coming soon.

During Economic Downturn, NOLs Can Give Your Business a Boost

With the economic downturn taking its toll on almost all facets of everyday living, from employment to personal and business expenditures, your business may be losing money as well. As a result, your business may have a net operating loss (NOL). Although no business wants to suffer losses, there are benefits to having an NOL for tax purposes. Your business can use the NOL in future years to offset its taxable income. Your business can also use an NOL to offset income from the prior two years; in this type of

“carryback” situation, it can mean an immediate tax refund to help with current operating expenses.

NOLs, Generally

A trade or business has an NOL when its allowable deductions exceed its gross income for the tax year. A business can have an NOL whether it is a corporation, partnership, or sole proprietorship. For example, NOLs can be generated if you operate a trade or business as a sole proprietorship that is taxed to the individual.

Deductible Expenses for Computing NOLs

Generally, business deductions are those deductions related to a taxpayer's trade or business or employment. For this purpose, the following types of losses are considered business deductions that can be used to compute an NOL:

- Losses from the sale or exchange of depreciable or real property used in the taxpayer's trade or business, including Code Sec. 1231 property;
- Losses attributable to rental property;
- Losses incurred from the sale of stock in a small business corporation or from the sale or exchange of stock in a small business investment company, to the extent that these types of losses qualify as ordinary losses;
- Losses on the sale of accounts receivable (but only if the taxpayer uses the accrual method of accounting); and
- Business losses from a partnership or S corporation.

In addition, the following expenses are considered business deductions for purposes of computing an NOL:

- Personal casualty and theft losses and non-business casualty and theft losses from a transaction entered into for profit;
- Moving expenses;
- State income tax on business profits;
- Litigation expenses and interest on state and federal income taxes related to a taxpayer's business income;
- The deductible portion of employee expenses, such as travel, transportation, uniforms, and union dues;
- Payments by a federal employee to buy back sick leave used in an earlier year;
- Unrecovered investment in a pension or annuity claimed on a decedent's final return; and
- Deduction for one-half of the self-employment tax.

Carryback and Carryforward Rules

Generally, an NOL must be carried back and deducted against taxable income in the two tax years before the NOL year before it can be carried forward and applied against taxable income, up to 20 years after the NOL year. An NOL must be used in the earliest year available; however, you can waive the use of the carryback period and immediately carry the NOL forward. To claim an NOL carryback, an

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Win Pistons Tickets!

You could win 4 Detroit Pistons basketball tickets for the March 3 (Tuesday) game against the Denver Nuggets! Just complete the form below and fax it to 248.273.6837 by February 16, 2009.

First Name

Last Name

Title

Company Name

Phone Number

Address

City

A random drawing will be held on February 17, 2009, to determine the winner. Entries must be received by February 16, to be eligible. One entry per company please. The winner will be notified by phone on February 17, and his/her name will appear in next quarter's newsletter.

The winner of last quarter's golf gift pack drawing was Don Munro of Munro Electric Company.

Congratulations, Don!

The Lighter Side

A Talk With God

A young man climbs to the top of Mt. Sinai to get close enough to talk to God.

Looking up, he asks the Lord . . .

"God, what does a million years mean to you?"

The Lord replies, "A minute."

The man asks, "And what does a million dollars mean to you?"

The Lord replies, "A penny."

The man asks, "Can I have a penny?"

The Lord replies, "In a minute."

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individual or a corporation must file an amended return within three years of the year the NOL was incurred.

Generally, the carryback and carryforward periods cannot be extended. Any NOL remaining after the 20-year carryforward period will be lost. However, you may be able to use an expiring NOL in the final year by accelerating the recognition of income.

As part of Congress' response to the current economic crisis, proposals have been offered to extend the carryback period for up to five years. We will monitor these proposals as they work their way through Congress in early 2009.

Partnerships and S Corporations

If your business operates as a partnership or an S corporation, the NOL flows through to the partners or shareholders who can use the NOL to offset other business and personal income. The partnership or S corporation itself cannot use the NOL.

Individuals

Individuals may have an NOL not only from business losses but from other expenses, although this is less common. In

addition to business losses, an individual includes in his or her NOL computation the following deductions:

- Employee business expenses;
- Casualty and theft;
- Moving expenses for a job relocation; and
- Expenses of rental property held for the production of income.

Doeren Mayhew Can Help

If you would like to discuss whether you have an NOL and how you might use it, call Doeren Mayhew today at (248) 244-3000. Our construction industry professionals can help you determine which strategy is most beneficial for your business.



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