

2015 Year End Success - Major Tax Provisions Passed into Law

In a major lobbying victory for One Voice, on December 18, 2015, President Obama signed into law a measure delaying, extending, or making permanent a number of tax provisions critical to manufacturers.

Permanent 14% R&D with AMT Claim – Extends R&D Tax Credit for 2015; Starting in 2016, R&D is made permanent at its current 14% level and allows small businesses (\$50 million or less in gross receipts) to claim the credit against their Alternative Minimum Tax (AMT) liability.

Permanent Section 179 Equipment Expensing – Extends Section 179 for 2015 restored to the \$500,000 with a \$2 million phase-out indexed to inflation starting in 2016. Also treats air conditioning and heating units placed in service beginning after 2015 as eligible for expensing.

Extends Bonus Depreciation through 2019 with AMT Claim – Extends from January 1, 2015 through 2019 Bonus Depreciation through 2019 with an additional year for certain property with a longer production period. The depreciation percentage is 50 percent for property placed in service during 2015, 2016 and 2017 and phases down, with 40 percent in 2018, and 30 percent in 2019. The provision continues to allow taxpayers to elect to accelerate the use of Alternative Minimum (AMT) credits in lieu of Bonus Depreciation for property placed in service during 2015 and beginning in 2016, increases the amount of unused AMT credits a taxpayer may claim in lieu of Bonus.

Two-Year Moratorium on Medical Device Excise Tax – The measure suspends for all of 2016 and 2017, the 2.3-percent excise tax imposed on the sale of medical devices imposed under the Affordable Care Act.

Commercial Building Energy Efficiency Deduction Extended – Extends through 2016 the above-the-line deduction for energy efficiency improvements to lighting, heating, cooling, ventilation, and hot water systems of commercial buildings.

Extends Hiring Long-Term Unemployed Credit – Extends through 2019 the work opportunity tax credit and beginning in 2016, allows employers who hire qualified long-term unemployed individuals (27 weeks or more) to claim up to 40 percent of the first \$6,000 of wages paid.

Extends Empowerment Zones for Two-Years – Extends through 2016 the tax benefits for certain businesses and employers operating in empowerment zones (economically distressed areas), and the tax benefits available include tax-exempt bonds, employment credits, increased expensing, and gain exclusion from the sale of certain small-business stock.

Exclusion of Small Business Stock Held for Five Years – Extends the temporary exclusion of 100 percent of the gain on certain small business stock for non-corporate taxpayers to stock acquired and held for more than five years.

Permanent Five Year Built-in Gains for S-Corporations – Permanently extends the rule reducing to five years from ten the period for which an S-Corporation must hold its assets following conversion from a C-Corporation to avoid the tax on built-in gains.

S-Corporation Charitable Donations – Permanently extends the rule providing that a shareholder's basis in the stock of an S corporation is reduced by the shareholder's pro rata share of the adjusted basis of property contributed by the S corporation for charitable purposes.

501(c)(4) Gift Tax Exemption – Treats transfers to organizations exempt from tax under section 501(c)(4), (c)(5), and (c)(6) as exempt from the gift tax.

The Year in Regulations

The final year of the Obama Administration promises to bring a flurry of environmental and workplace regulations. In 2015 alone, federal agencies issued 3,408 final rules, costing manufacturers billions of dollars. Below are a few of the regulations on which One Voice is focusing in 2016:

NLRB Ambush Elections – Took Effect April 14, 2015

On Capitol Hill and in the courts, One Voice and coalition partners repeatedly defeated the Ambush Election rule. However, National Labor Relations Board (NLRB) issued a new final rule in December 2014, to shorten the time from when a union election is called and a vote is held to as little as ten days (from the current average of 30-60 days). It also requires employers provide unions with the personal email and phone numbers of eligible employees 48 hours prior to a vote holding a vote. Through its coalition partners, One Voice continues to challenge the NLRB rule in the courts.

Waters of the U.S. – Finalized May 2015; Court Approves Stay

In October 2015, an Ohio court halted implementation across the country of a regulation expanding the federal government's jurisdiction over inland waterways from 3.5 million miles to over 8 million. Known as Waters of the U.S., the EPA rule allows it to consider industrial ditches as "tributaries," leading to costly maintenance activities, and expensive and time-consuming dredge and fill permits. The change also affects stormwater retention ponds, fire ponds, and on-site impoundments, leading to point source discharge and other permit requirements. The rule opens up thousands of manufacturers, farmers, and other businesses to citizen group lawsuits and lengthy environmental reviews – the median cost for some of these permits is \$155,000. One Voice is fighting along with a bipartisan group of lawmakers to permanently stop the rule both on Capitol Hill and in the courts.

Creation of Micro-Unions within a Single Employer – Upheld May 2015

One Voice is part of a broad coalition involved in challenging the legality of an NLRB decision allowing as few as two employees to form a micro-union. While additional challenges remain, courts have upheld the NLRB proposal that is already causing major headaches for employers who now have to negotiate with multiple unions in contract discussions – from production to janitorial to administrative. Several years ago, labor groups embarked on a strategy to create a series of smaller union groups, which added together, would help increase their enrollment numbers to augment their significant membership losses.

NLRB Joint Employer for Temps Decision – August 2015

The NLRB issued a decision redefining what constitutes an "employer" in the U.S., affecting thousands of manufacturers who employ temporary workers and subcontractors who perform regular in-house functions. In *Browning-Ferris*, the NLRB ruled that Browning-Ferris Industries, a Houston-based waste-disposal company, is a joint employer of workers provided to the firm by a staffing agency and therefore is responsible for any onsite labor violations and requires the company to bargain collectively with those workers in union efforts. One Voice is joining coalition partners in legal action against the NLRB.

Court Agrees with One Voice; Upholds Challenge on Conflict Minerals – August 2015

A three-judge panel of the U.S. Court of Appeals for the D.C. Circuit in August again sided with a One Voice coalition reaffirming its previous ruling that the U.S. Government cannot compel publicly traded companies to self-declare that their products do not contain minerals sourced from the Democratic Republic of Congo (DRC) or surrounding countries. This ruling upholds an April 2014 Court decision that forcing companies to publicly state they are "DRC conflict free" or "DRC Conflict Undeterminable" violates the First Amendment. While this is an important decision affirming our lawsuit, it does not affect the U.S. Securities and Exchange Commission's (SEC) authority to require due diligence and reporting of tin, tungsten, tantalum, or gold (3TG). The case is likely headed to the U.S. Supreme Court.

EPA Clean Power Plan Rule – October 2015

One Voice succeeded in persuading the U.S. Supreme Court to block the EPA from moving forward with an EPA regulation aiming to reduce carbon dioxide and other emissions from existing power plants by up to 32 percent by 2030 compared to 2005 levels, starting in 2022. More than 2.65 million stakeholders filed comments on the proposal, which, by the EPA's own admission increases the cost of electricity by 6-12 percent annually. While industry studies show the power plant rule could raise prices by 20 percent, even taking the EPA's 12 percent figure is a major increase for metalworking manufacturers. In 2015, One Voice members reported spending \$135,000 on energy, meaning this regulation will cost metalworking manufacturers \$30,000 annually, not counting the average 7% increase members already expect in 2016 due to market forces. Taken together, this \$40,000 energy tax imposed by Washington will make manufacturers less globally competitive. The stay by the Court is a major victory; the next step is a June 2nd hearing by the full Court of Appeals but most expect the Supreme Court to decide the case in 2017.

Ground Level Ozone Emissions – October 2015

The Obama Administration released the long awaited Ground Level Ozone rule ahead of a court mandated October 1, 2015 deadline. Described by experts as the costliest regulation in U.S. history, the EPA is proposing to further regulate ground level ozone, the main component of smog. One Voice is strongly opposed to this new initiative, which experts say will cost the U.S. economy \$1.7 trillion by 2040 while increasing compliance costs by \$1.1 trillion. The White House twice ordered the EPA to delay the proposal – ahead of the 2012 Presidential and 2014 Congressional midterm elections. The proposal will reduce ground level ozone levels from 75 parts per billion (ppb) to 70ppb. Some environmental groups had called for a reduction to 60ppb, which would classify the entire U.S. as a non-attainment zone, potentially limiting manufacturing production, expansion of facilities, hiring new employees, and infrastructure projects. If the rule is not blocked, states will have to present plans to the EPA about how they will reduce emissions, largely through restricting economic activity and growth.

Crystalline Silica Final Rule – March 2016

OSHA released the Respirable Crystalline Silica standard final rule in March 2016. In August 2013, after more than two years of delay, OSHA proposed a new permissible exposure limit (PEL) of 50 milligrams of crystalline silica per cubic meter of air (50 µg/m³); half the current level of 100 milligrams. Unions and other groups fought for years to update the standards first established in 1971.

Department of Labor Persuader Rule – March 2016

After five years of delay, the Department of Labor finalized its "Persuader Rule" in March 2016. The new regulation requires that employers and their advisors file certain reports with the Department if they use outside labor consultants to interact with their employees during a union organizing activity or collective bargaining dispute. The Administration first proposed the rule in 2011 and was immediately met with fierce opposing from industry leading to multiple delays. The rule is a top priority for unions, especially as their numbers dwindle and the stakes increase during organizing activity with the implementation of the Ambush Election rule on April 14, 2015.

One Voice Opposing Labor Department Overtime Eligibility Expansion – May 2016

One Voice filed official comments opposing the Labor Department's proposed rule to expand the number of workers eligible for overtime by roughly 5 million, mostly "white collar," workers. The proposal raises the overtime exemption wage to \$50,440 per year or \$970 per week for Executive, Administrative, Professional & Clerical Employees (EAP). This one-size fits all approach applies to all states without factoring in regional pay differences. It also indexes the overtime exemption at a rate with roughly 10 percent annual increases in addition to raising the exemption threshold for highly compensated workers from \$100,000 to \$122,148. The White House is reviewing the final rule expecting a May 2016 release.

OSHA Electronic Recordkeeping – Spring 2016

One Voice filed comments opposing an Occupational Safety and Health Administration (OSHA) proposal to post on the internet incident/injury reports similar to Form 300A. The Administration is requiring businesses with 20 or more employees to file incident/accident reports electronically on an annual basis (those with more than 250 employees file quarterly) which they will make public. In August 2014, OSHA issued a supplemental notice to amend the original rule to require that employers inform their employees of their right to report injuries and adding whistleblower protections for employees. The proposed rule does not improve workplace safety and will only create a misperception of manufacturing as a dangerous occupation. The rule is likely to take effect in the Spring of 2016.

Slips, Trips and Fall Prevention – April 2016

OSHA is reviving a rule delayed in 2003 and 2011 to update the 1990 rule addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems in keeping with current technology and procedures. This could lead to a significant changes of existing procedures in place at thousands of manufacturing facilities across the country. A final rule is projected for April 2016.

Medium and Heavy-Duty Vehicle, Engine Emissions and Efficiency Regs – June 2016

The EPA released its draft Phase II of the Medium and Heavy-Duty Vehicle and Engine Emissions and Efficiency initiative. The Agency outlined four categories for improved efficiency ranging from 4-24 percent affecting Model Years 2019-2027: Heavy-Duty Pickups/Vans; Vocational; Tractors; Trailers. The EPA will finalize the rules in June 2016 with most provisions affecting the 2018 production line. This builds off the Phase I standards, which lowered emissions and increased efficiency.

National Ambient Air Quality Standards (NAAQs) for fine particulate matter (PM_{2.5}) – June 2016

The EPA announced in November that it is moving forward with a Final Rule in June 2016 to impose new requirements on states submitting implementation plans to comply with more stringent National Ambient Air Quality Standards (NAAQs) for fine particulate matter (PM_{2.5}). The action addresses a range of requirements including the timing of plan submissions, attainment deadlines for areas designated nonattainment, and new standards for reasonably available control technology, reasonably available control measures, best available control measures, and new source review.

EPA “Good Neighbor” Rule – August 2016

The Administration is formally proposing to update a rule upheld in 2014 by the U.S. Supreme Court allowing the EPA to regulate air pollution across state lines. The so-called “good neighbor” rule requires nearly thirty states to reduce certain emissions from fossil fuel fired power plants. The EPA is proposing to issue a Final Rule in August 2016 to expand the policy to cover nitrogen oxide emissions from twenty-three Eastern states as well. The significance of the case went beyond just the “good neighbor” rule, as the Administration is clearly using the decision to justify expanding emissions regulations. The rule will require that each state developing a plan to comply with air pollution standards shall include provisions to prohibit sources within the state from emitting any air pollutants in amounts that will contribute to another state achieving their emissions standards.

OSHA Combustible Dust Standard – August 2016

OSHA pushed back its proposed Combustible Dust Standards yet again, this time delaying the rule by another six months. The Department of Labor announced OSHA will now convene a small business review panel for combustible dust in August 2016 instead of the previously scheduled February 2016 timeline. Since 2011, OSHA has repeatedly delayed convening the panel, a requirement before the rule may proceed. Absent further delay, the Administration will likely issue a final combustible dust rule by the end of 2016.

Lockout/Tagout Standard – September 2016

OSHA plans to issue a request for information (RFI) in September 2016 about the use of computer-based hazardous energy controls into lockout/tagout systems to understand the strengths and limitations of these new technologies.

Injury and Illness Prevention Program (I2P2) – October 2016

In 2014, under pressure from manufacturers, OSHA quietly announced the delay of a proposed rule requiring employers to implement an Injury and Illness Prevention Program (I2P2). This proposed rule will include new standards of what constitutes an effective workplace safety program. The International Organization for Standardization (ISO) is working on global guidelines it may finalize in October 2016 (ISO 45001: 2016).