

## **Legislative Update Report**

February 2004

by Don Kensey, 2003 Legislative Committee Chair

### **Gas Guzzler Tax Gains Momentum**

US Senators Charles Grassley (R-IA), Chairman of the Senate Finance Committee, Max Baucus (D-MT), Ranking Member of Senate Finance Committee, and John Breaux (D-LA), Member of Senate Finance Committee introduced S1962, "Excise Tax Reform and Simplification Act". The Excise Tax Reform and Simplification Act amends the Internal Revenue Code with respect to the following excise taxes: (1) highway excise taxes, including appropriating to the Highway Trust Fund the gas guzzler tax, and repealing the 4.3 cents per gallon General Fund excise tax etc, etc.

Section 101 of the bill is as follows:

Sec. 101. Dedication of Gas Guzzler Tax to Highway Trust Fund. (a) IN GENERAL- Section 9503(b) (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesigning subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph: © section 4064 (relating to gas guzzler tax), (b)UNIFORM APPLICATION of TAX- Subparagraph (A) of section 4064(b)(1) (defining automobile) is amended---

(1) by striking 6,000 pounds and inserting 8,500 pounds, and (2) by striking the second sentence

© EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

In essence two things will happen for the limousine industry with the passage of the critical bill; elimination of the language except for limousines, which is the reference to "striking the second sentence", and the GVWR is being raised as to what is exempted.

The NLA has been working diligently with Elizabeth Paris, Tax Counsel for Chairman Grassley, and Matt Jones, Counsel to Ranking Member Baucus, for over a year. All of our hard work may finally be paying off. It is our understanding that Chairman Grassley is attempting to fast track the Excise Reform package for the President as part of his reelection strategy.

Please be aware that there may be some tinkering with the GVWR, but the important element is that we are a player in the legislation. The reason we state this is that the Elizabeth Paris has us gathering information last week from some of our manufacturers the curb weight of various stretch sizes that are warranted by Ford and Cadillac.

On the House side we have the free-standing restoration of the "gas guzzler tax" exemption in HR2662, which is sponsored by Congressman Dave Camp (R-MI), a member of the Ways and Means Committee and Regional Whip, Roy Blunt (R-MO), Majority Whip, Rob Andrews (D-NJ) and 14 other members of Congress. Mr. Camp is setting up a meeting with the Ways and Means Committee, which is planning to introduce its own Excise Tax Reform and Simplification Act, to ensure that the limousine industry is include in the package. This would nearly guarantee that any bill passed between the House and Senate would include the gas-guzzler tax and the restoration of our exemption. The meeting is being set for the week of February 19th.

### **Overtime Wage May Have Possible Solution**

The NLA has been working with Ms. Johnnie Kaberle of Mr. Blunt's Capitol staff and Mike O'Donovan of Mr. Andrew's for the past eight months in an effort to change the existing "through ticketing" definition that organized labor was able to force upon the limousine industry five years ago. The criteria for establishing a limousine operator's right to maintain exemption from the FLSA overtime wage rule were; at least 4% of your trips crossed the border to another state, or you could demonstrate that your vehicles were used in the continuation of an interstate trip through pick ups at the airport, train station or bus terminal.

We are trying to move USDOT to change the criteria of "through ticketing" based on how limousine operators actually conduct business.

Please see the attached email:

Ms. Kaberle:

(Please find the original memo outlining the issue. Further, we have given some specific court sites that strengthen our position on this issue. If there is a need to meet with the USDOT Chief Counsel, we are prepared to accompany you. Hopefully, we can finally put all of this behind us.)

As was discussed yesterday regarding USDOT and the "overtime wage;

Several months ago USDOT agreed to look into providing a solution to the problem confronting the limousine industry, which has been devastated by the events of 9/11 and the economy's downturn. As you recall the definition of "through ticketing" to determine compliance for an interstate trip was inappropriate given the nature of how limousine companies and its corporate clients operate. To our knowledge, no airline, train or bus service marks on the ticket the use of limousine service as a part of the trip.

All that needs to be done, as previously discussed, so that limousine operators will be in compliance and be able to demonstrate that the pick-up and/or drop-off were part of a "continuation of an interstate trip" is to add the following language:

"A through-ticketing arrangement" may be demonstrated by documentation provided by the ground transportation service, travel agents, corporate travel managers or similar individuals or agents that shows that the passenger's origin of travel by another mode of transportation was from another state or country or that the passenger is being returned to another mode of transportation to travel to another state or country."

To date the situation has not been resolved and the industry is being exposed to non-compliance violations in such states as Texas, Arizona and Colorado. It is imperative that the matter is dealt with as quickly as possible.

Barry Lefkowitz Government Affairs Representative, National Limousine Association

PS. The Supreme Court (Morris v. McComb) has previously ruled that transportation within a single state is interstate commerce within the meaning of the FLSA where it forms a part of a "practical continuity of movement" across state lines from the point of origin to the point of destination. In other words, a pick up of a client at the airport coming from Missouri to Reagan International is a continuation of an interstate trip. It is shown on the basis of trip log and other mechanisms as described in the refinement of "through ticketing" above. In addition, there are two district court cases Birmingham v. Airport Limousine Service and Spivak v. Pittsburgh Transportation Company that demonstrate the continuous trip precedent and thus eligibility.

Ms. Kaberle is presently working with Secretary Mineta's Chief Counsel. She is cautiously optimistic that by the LC&T Show there may be a resolution.

### **NLA Helping State Associations**

**Arizona** - A major member of the taxi industry was able to convince the legislature that they were a spokesperson for the limousine industry. They were successful in passing legislation that not only was designed to close down gypsy taxi operators but put limousine operators in Arizona in harms way starting on July 1st. The NLA had two major accomplishments recently; we assisted in the hiring of their lobbyist, Roberto Gutier and mentoring him on the industry, and we spent three days working with the legislature and helped rewrite the entire bill such that the limousine industry gained visibility and credibility and has developed a foot-hold with them being viewed as a consumer advocate.

**California** - The City and County of Los Angeles has made regulatory rulings counter to the industry's ability to conduct "medical transport" service. We are working with NLA members and have designed a multi-phase strategic plan to overcome this problem. The plan involves developing a political campaign of support, grassroots development, and networking with other interested organizations and groups. We will be visiting California in the near future to provide direct assistance.

**DC, Virginia and Maryland** - A planning session was held on January 30th with the leadership of the three NLA state associations in Washington. The session was very positive and provided the participants an opportunity to discuss the establishment of a plan of action to seek reciprocity between the three jurisdictions as exists in other areas of the country. Led by the NLA, a conference will be planned for the middle to the end of March with the enforcement officials of the three jurisdictions to work out arrangements that will allow for recognition of intra-state activities.

**Kentucky** - Members of the Kentucky legislature have indicated that the time has come for statewide regulations that will supercede the present PUC process. Under the existing PUC regulations an operator can prevent new operators from entering the marketplace or existing ones from expanding. We are trying to accomplish two agendas in this particular situation; the formation of a Kentucky Association (which would help us politically in DC with Senator Mitch McConnell, one of the most powerful members of the Senate) and the crafting of legislation. We have been assisting in the crafting of the legislation for Kentucky to adopt a new law governing the limousine industry.

**Las Vegas** - One of our NLA members is in court being sued by drivers as regards the "overtime wage" exemption. We have been working closely with Robert Rosenthal, Esq., in providing case law (see overtime wage email above) and other pertinent information about the industry to assist in their defense. A loss in the case could establish a precedent for future cases, with the exception of California, that would be harmful to our ability to maintain the FLSA exemption protection.

**Ohio** - The Ohio Valley Limousine Association members are having great difficulty with the Pittsburgh International Airport's application of the new interstate law. We have been educating the members on strategy and the law itself to properly approach the airport. This may require the NLA meeting with the airport authorities, as we did several years ago to help the Pennsylvania members, to alleviate the issue.

**Oregon** - John Sinibaldi has requested assistance with their problem with the City of Portland. At this juncture, we have provided him materials that address the issue raised. We previously have assisted the Oregon association in negotiating an agreement with the airport.

Other states have indicated a desire to have direct assistance from the NLA and we will try and provide support. Clearly our state associations believe that the NLA can provide significant local assistance in addressing serious issues confronting their members.

provided by [\*\*National Limousine Association\*\*](#)