Shuffling the Deck

C-store operators are betting that a Trump administration will usher in a more business-friendly environment.

By David Bennett, Senior Editor

IN THE WORLD OF New York real estate, Donald Trump earned a reputation as a self-publicist and an assertive schemer. Now, as the soon-to-be leader of the free world, President-elect Trump is still viewed by many as a self-publicist and an assertive schemer.

He's also projected as a likely pro-growth leader, heading an administration with an agenda that prioritizes big tax cuts for business and a regulatory rollback not seen in the country since former President Ronald Reagan labeled ketchup a vegetable. President-elect Trump has stated that, after his inauguration, he intends to press forward with his goals to overhaul the tax code, healthcare and immigration laws.

Though it's too early to forecast what is going to happen under the new administration, the moves the president-elect has made so far should give convenience retailers an idea of what's to come. First are his cabinet selections. Among the choices are Rep. Tom Price, tapped to run the Department of Health and Human Services, and Andy Puzder, president and CEO of CKE Restaurants Inc., chosen to head the U.S. Department of Labor.

However, proponents insist the important thing is not the industries the nominees represent, but the fact they know about business and what makes businesses work.

Robert Griffith is the president of Golden Pantry Food Stores Inc., a convenience chain of more than 40 stores based in Watkinsville, Ga. Like others in the c-store community, Griffith is quietly optimistic.

"This entire election cycle has been very interesting, but also unpredictable, based on President-elect Trump's campaign promises and now, cabinet appointments, said Griffith. "However, I do feel as though the incoming administration will be more favorable for business in general."

For c-stores to match up with bigger and more resourceful retail competitors, they must be able to operate in a more nimble environment. Insisting he would drain "the swamp," once elected, some in the c-store industry say the incoming president can help by slaying a few authoritarian alligators.

BETTER TIMES

Doug Galli, vice president and general manager of Reid Stores, who participated in our wages article, said the next president should make way for businesses to operate efficiently—a path currently choked by tons of bureaucratic red tape.

"The real problem is the entire government bureaucracy," Galli said. "They write rules and regulations that are stifling business growth. We have layer upon layer of government agencies with oversight that is nearly impossible with which to comply. The insanity has to stop."

Of course there are many other issues with which c-stores must contend going forward including the probable repeal and replacement of the Patient Care and Affordable Care Act (ACA). In addition, the minimum wage is set to rise in 21 states in 2017. This is aside from the federal minimum wage hike proposed under the President Obama's administration.

As a new administration takes the helm, *Convenience Store Decisions* looks at some of these issues in the following pages. How the next four years plays out is up for debate, but many convenience retailers do seem optimistic as they wait to see what happens.

More Wage Clashes to Come

Living-wage issues will continue to be a point of contention for convenience stores going forward. However, the industry might have powerful allies waiting in the West Wing.

By *CSD* Staff

WITH JUST DAYS BEFORE it was scheduled to take effect, a federal judge on Nov. 22 halted the implementation of a rule that would have extended overtime eligibility to some 4 million Americans.

The Labor Department's reworking of the overtime rule, crafted by the Obama administration, would have required employers to pay time-and-a-half to their employees who worked more than 40 hours in a given week and earned less than $47,476 a year.

Critics claimed the mandate would force retailers to accept reduced profits or cause them to raise the price of goods to cover added expenses. Others feared such a wage hike could result in fewer jobs.

REPRIEVE GRANTED

That one decision by a federal judge gave unprepared employers a reprieve to solidify their planning. For others such as Doug Galli, vice president and general manager of Reid Stores, it was a reprieve at a time when hard decisions were being made.

"We had a plan in place to move our store managers to non-exempt. It would have cost us around $200,000/year in overtime," said Galli. "We ask our store managers to work a 46-hour work week. They averaged around 47-48 (hours). We feel that is fair. Most of our store managers were upset with the change. They would lose flexibility with scheduling; the bonus program would be reduced because it would have to be calculated on the number of hours they worked. It was a real nightmare."

Now, as a new administration prepares to take charge, wage initiatives and the potential effects they have on U.S. businesses—including convenience stores—are sure to surface regularly over the next four years.

President-elect Donald Trump's pick to lead the U.S. Department of Labor—and have a large influence on what direction the new administration takes—is Andy Puzder, president and CEO of CKE Restaurants Inc., which includes the Hardee's fast food chain. A Trump supporter during the presidential campaign, Puzder has criticized President Obama's proposal to increase the federal minimum wage to $10.10 an hour from $7.25, calling it counterproductive.

Galli called the fast-food maverick a great choice.

"We need people in the Department of Labor that know and understand how to create jobs and what it means to run a profitable business. The labor increases (especially in New York State) and work rules have been nearly impossible to follow. We have had to raise our retails two years running just to stay ahead of the payroll increases with more to come in our 'blue' state."

Reid Stores Inc. is a division of the Reid Group, which operates 50 locations throughout western New York and northwestern Pennsylvania. The group of companies also includes Reid Petroleum Corp. an independent, full-service marketer of motor fuels.

Galli, who also chaired the New York Association of Convenience Stores (NYACS) this year, said association members of NYACS have been on the front lines of New York State's wage wars. Most believe that the contrast between living-wage initiatives and the cost of doing business is stark. Crosby's is no exception.

STRIKING A BALANCE

"We do believe that there has to be a balance struck between business and personal needs. As a company we reinvest in our stores and facilities as well as grow through acquisition," Galli said. "We pay a competitive wage with a very nice bonus program for our management teams. We would have to eliminate the bonus and reduce the flexibility we allow our exempt store managers if the overtime rate is held up. Regardless of what the federal government does, doing business in New York State, we are already on the path of much higher wages."

Before the measure was suspended by the federal judge, Puzder had been vocal against new overtime rules proposed by the U.S. Department of Labor, a position seemingly aligned with the new president-elect.

Healthcare Will Change, but How?

No matter the GOP's best intentions, reducing Obamacare to nothingness probably won't happen. However, convenience retailers will have to wait and see what component parts President-elect Donald Trump keeps and what goes away.

By *CSD* Staff

FEW PIECES OF LEGISLATION in recent U.S. history have endured as much magnification, criticism and accolades as the Patient Protection and Affordable Care Act (ACA). Initiated by President Obama's administration and passed by Congress in 2010, the law—known as Obamacare—has been lauded for providing 20 million Americans healthcare insurance and equally slammed for spurring confusion and a spike in premium costs.

And there's more to come for the ACA as the next administration outlines its own healthcare blueprint.

The transition team of President-elect Donald Trump has released a sketch of his healthcare proposals with details of his intention to repeal President Barack Obama's healthcare law. In part, the plan would allow people to buy health insurance across state lines and allow states to establish high-risk pools.

EVALUATING PRICE

Last year, Congress passed a reconciliation bill that would have repealed the mandates that individuals have coverage and that companies with 50 or more employees provide workers with affordable insurance. Also, it would have done away with the federal subsidies by 2018, eliminated funding for Medicaid expansion and canceled a multitude of Obamacare-related taxes.

Rep. Tom Price, a Georgia Republican and chairman of the House Budget Committee helped write the language for the bill, which is now seen as one of the main paths forward to repeal portions of the ACA. It would also employ the same budget reconciliation rules Democrats used to originally pass the ACA in 2010.

This reconciliation option would leave in place the basic structure of the ACA, including the insurance exchanges and rules that require insurers to cover existing conditions and permit young adults to stay on their parents' insurance policies until age 26.

It's no coincidence that Price was recently tapped by President-elect Trump as head of the Department of Health and Human Services. Now that one of the prime critics of Obamacare is well positioned to plan the next steps of healthcare reform, is there reason for convenience retailers to be concerned?

"There should be optimism that employer mandate penalty exposure and some of the ACA's administrative costs (including reporting obligations) will go away," said David Fialkov, vice president of government affairs at the National Association of Truck Stop Operators. "It is unclear at this early stage whether and to what extent a replacement law can or will deal with cost issues, however."

In his career, Fialkov has also served as legislative counsel to the National Association of Convenience Stores (NACS).

COMMUNITY CONCEPTS

Prior to 2014, and for the purpose of setting health insurance rates, insurance carriers determined a "small group" is to be "community rated," meaning rates for those employers would be based on the insurance carrier's total book of business claims experience, and not the claims experience of that individual employer's employee. That concept might also come under scrutiny.

"The biggest decision that will have to be made is whether 'community rating' is retained from the individual and small group markets," Fialkov said.

In the c-store community, companies such as St. Romain Oil Co., which operates 10 Y-Not Stop locations throughout central Louisiana, will be monitoring the overhaul of the ACA closely. Annie Gauthier, chief financial officer and co-owner of St. Romain, agrees with Fialkov that companies shouldn't fear the future of healthcare.

"I believe small and middle-sized chains should be optimistic about the potential changes to the ACA, although I think we're facing more months (if not years) of uncertainty as we wait and watch to see what will change and how and when," Gauthier said. "As an employer who proudly offers coverage to our team members, I look forward to a system that may better serve our team members and our company."

Tobacco Is a Hot-Button Issue

A long-time magnet for governmental regulation and unyielding taxes, tobacco remains a vital category for convenience retailers. Under a new administration, should retailers expect any lessening of federal controls of tobacco products such as e-cigarettes?

By *CSD* Staff

TOBACCO PRODUCTS HAVE BEEN a darling of sin taxes and anti-smoking advocates for decades. Despite tobacco manufacturers' lobbying efforts in city halls and state capitols, the industry has been rebuffed at many turns.

For instance, in the state of California—which many states tend to follow when it come tobacco regulation—Gov. Jerry Brown last summer signed sweeping tobacco control bills that will raise the smoking age in California from 18 to 21 and treats electronic cigarettes as tobacco products.

Such rulings and laws have greatly impacted the c-store industry. In fact, the last segment mentioned above—e-cigarettes—faces a long up-hill battle due to the FDA's deeming regulations, which among other mandates, bans the sale of deemed products to anyone under 18. This covers electronic nicotine delivery systems (ENDS), also called e-cigarettes, personal vaporizers and vape pens.

GRANDFATHER CLAUSE

The FDA's deeming regulations also call for any vaping products created after Feb. 15, 2007 to be subjected to extensive testing before companies can sell them to consumers. Because the FDA considers virtually any change in a product to constitute a new product, this means that the deeming regulations will essentially freeze the vaping market. Not only will ENDS manufacturers not be able to introduce new products, but they will also be unable to make changes in existing products without approval.

This results in nearly 99% of all current products on the market falling under this new regulation.

That's where the administration of President-elect Donald Trump and the Cole-Bishop Amendment come into play, said Don Burke, senior vice president with Management Science Associates Inc., a diversified information management company. The Cole-Bishop Amendment would move this predicate date forward nine years, allowing for products that have been created through Aug. 8, 2016, to be grandfathered.

Though it's all speculative until formal action is taken by the new administration, Burke said, early clues from the administration could be construed as positive signs for retailers.

"It's encouraging. I think with the results of the election and the orientation of less regulation on the part of Trump and Pence; more likely the Cole-Bishop Amendment going through Congress is more likely to pass. And, that would be a better opportunity for vape," said Burke.

FDA APPROVED

At the time of writing this article, President-elect Trump had not selected the finalist to head the FDA. *Bloomberg News* reported that President-elect Donald Trump could nominate Jim O'Neill, a Silicon Valley investor. O' Neill previously has commented publicly about overhauling the agency.

Other comments to which convenience retailers may be paying attention are attributed to Vice President-elect Mike Pence, who has condemned the feds' staunch concern with safeguarding against public health issues like tobacco use.

Mary Szarmach, vice president of trade marketing and government relations for Smoker Friendly International LLC, is the immediate past president of the National Association of Tobacco Outlets (NATO). She said while Pence's comments must be taken in context, it is revealing for retailers that have been stricken by the overabundance of tobacco legislation.

"I have read that he has questioned secondhand smoke studies and vaping studies, basically aligning himself with the group that believes there is junk science and inaccurate numbers in these studies," said Szarmach. "He has always been against government regulation, and seems to stand with our industry on that. I think he will be an ally for us, fighting against additional taxation, and working on the FDA Center for Tobacco Products—holding them accountable and policing their arbitrary decisions."

In the end, responsible actions regarding tobacco will still rest prominently with retailers.

"I think if we continue to do good work keeping tobacco out of the hands of youth, this administration will probably let us do business as usual, I hope," said Szarmach.

Can New Fuels Flourish?

The new president-elect has indicated he plans to create an economic agenda steeped in more oil drilling and fewer regulations. However, will this stunt the steady growth biodiesel and alternative fuels have enjoyed the last few years?

By *CSD* Staff

PRESIDENT-ELECT DONALD TRUMP WANTS to free the energy industry of restrictive environmental regulations. He'll have a kindred spirit in Oklahoma Attorney General Scott Pruitt, who he picked to head the U.S. Environmental Protection Agency (EPA).

Trump has put together a group of A-listers—from Exxon Mobil CEO Rex Tillerson, Trump's pick for secretary of state, to Rick Perry, who is expected to move to lift restrictions on drilling, green-light pipelines and diminish emissions controls as head of the U.S. Department of Energy.

However, alternative fuel proponents and retailers such as Douglass Distributing Co.—owner and operator of 22 Lone Star Food Stores hope to maintain today's momentum of homegrown renewable biofuels like ethanol.

SUPPLY AND DEMAND

Current fuel policy, based on the Renewable Fuel Standard, creates a strong incentive for fuel marketers to blend renewable fuels into the fuel supply while lowering the price at the pump for consumers. Credits called Renewable Identification Numbers (RINs) are the mechanism for insuring that the prescribed levels of blending are reached.

If gasoline blenders fail to comply with the mandated volumes (based on the volume of gasoline they sell in the U.S.) they are required to buy RINs to make up the shortfall. Each qualifying volume of biofuel (one gallon of corn ethanol, or its energy equivalent) is tracked by a unique 38-digit serial number—the RIN—as it passes through the supply chain.

Because these refining and importing companies aren't often blenders, they need to buy RINs to comply with industry regulations. The blending is often conducted by bigger oil companies, explained Bill Douglass, chairman and founder of Douglass Distributing.

This doesn't foster an equal playing field for retailers, something Trump officials should review, said Douglass.

"The new administration needs to change the point of obligation for the transfer of Renewable Identification Numbers from the refiners and importers to the rack," Douglass said. "This would rebalance the fuel price inequity currently favoring the large refiners and large marketers over the small, independent retailers. Currently this buying disparity is 10-cents-per-gallon on unleaded and 17-cents-per-gallon on diesel. Biofuels could be good if the small retailers were not at such a huge RIN buying disparity."

BEAN EXTRACT

While corn is the primary ingredient in ethanol, soybeans have become a leading renewable source of biodiesel. Today, about 50% of all biodiesel in the U.S. is made from soybean oil, according to the American Soybean Association.

Teutopolis, Ill.-based Meyer Oil Co., which operates 17 Mach 1 Stores in central and southern Illinois, has incrementally built its volume of bean oil-blended fuel offerings over the last few years. Currently, Mach 1 sells 11% bean oil at all 17 locations.

"Whatever the administration decides, they need to look at it as a long-term vision and remove the annual instability such as removing and reinstalling the $1-per-gallon bean oil credit," said Alan Meyer, chief operations officer of Meyer Oil. "Producers and retailers have to have an idea where the government incentives will be so infrastructure can be built."

An incentive to boost U.S. biodiesel production, the bean tax credit has had several near death experiences; it was allowed to lapse at the end of 2009, 2011, 2013 and 2014.

Of course, there's more to the alternative fuel picture than just beans. Douglass encourages the new president-elect to look at developing natural gas as a fuel option. There are others.

"I would focus on more self-sustaining energy sources such as hydrogen as this won't cause a shortage anywhere else," Meyer said.

Trump seemingly is already developing an energy plan for the nation that Meyer can get behind.

"I hope he continues to focus on domestic production to keep prices low and removes some of the instability caused by foreign dependence," Meyer said. "This is currently not an issue, but future concerns can be alleviated by lowering domestic production costs."

Food Rules Gnaw at C-Store Operations

Will the 'regulatory creep,' which marked the Obama administration, withdraw under President-elect Trump?

By *CSD* Staff

THERE'S NO SHORTAGE OF pundits who assert that compliance with governmental rules and laws is a greater encumbrance on small companies than large ones, thwarting small business formation, growth and job creation.

The federal government's track record of increasing regulatory burden on American companies extends to the convenience channel. More and more that burden has encroached on c-store food offerings.

SNAP RELAXED

Two food-related mandates that have climbed to the forefront of c-store concerns are Supplemental Nutrition Assistance Program (SNAP) criteria and menu labeling. Both were hot-button issues during 2016. It was just recently, however, that some new SNAP mandates initiated by the U.S. Department of Agriculture (USDA) were altered—to the relief of many c-stores.

For example, the earlier version of the rule would have required that 85% of a store's food sales be from items that are not cooked or prepared at the location. Opposition pushed the USDA to trim the requirement to 50% of gross food sales. Also, the language was clarified, specifying that healthy snacks can count as staple foods.

"What I would add is that the Food and Nutrition Service

(FNS) heard our comments and complaints about the proposed SNAP rule loud and clear," said Jack Kofdarali, immediate past chairman of the National Asssociation of Convenience Stores (NACS). "The final comments (ending May 18, 2016) helped to vastly change it in our favor. While we do still have some questions for FNS we consider this a huge win for our industry."

He acknowledges the final rule is still complicated.

Some studies indicate that many Americans, including the 15% of rural households that are food insecure, live several miles away from grocery stores or have restricted transportation options.

C-stores such as Kent Kwik—part of the Kent Cos., based in Midland, Texas meet an important need in these areas. Bill Kent, president and CEO of Kent Cos., said SNAP isn't a highlight in every one of Kent Kwik's 41 stores, but is a critical service at many locations.

"It varies from store to store, but it's very important," Kent said of his company's participation in SNAP. "We need to be a part of it. We want to be a part of it. And in some stores, it's a substantial part of their business. It's important to the whole industry."

A host of states have levied taxes on sugary drinks. Critics have argued that such taxes don't help to reduce consumption, and that they feed bureaucracies that waste money instead of helping the public. Kent agrees and anticipates that new Trump administration will work to pare down some of the spread of government regulations that hovers over U.S. c-store operations.

"You hope there's a general reduction in this regulatory creep that occurs," said Kent, who serves on the NACS board, including its legislative committee. "It's like a glob that just keeps growing and consuming more and more."

MENU LABELING

As part of the Affordable Care Act passed in 2010, the rules mandate that restaurants and retailers selling prepared foods in 20 or more U.S. locations must place calorie counts next to menu items or on menu boards.

Scheduled to be enacted industry-wide next year, the menu-labeling rule will tax retailers' resources, said Kofdarali, who also serves as president of Corona, Calif.-based J&T Management Inc., that up to a year ago had operated 28 Arco/ampm stores in southern California.

Last year, Kofdarali sold 24 of those stores and is looking at other industry opportunities.

"The new administration is aware of the importance of fixing the menu labeling law," said Kofdarali. "Congressional leaders have indicated it is near the top of the list of regulatory changes in need of swift action in 2017, as retailers are already beginning to spend money to prepare for a May 5, 2017 compliance date."

Tax Proposals and Consequences

Under the Trump administration, the overall tax bills for most U.S. taxpayers—including many owners/operators and convenience store businesses—are almost certain to be lowered.

By Mark Battersby, Contributing Editor

ANY CHANGE IN WASHINGTON brings the possibility, indeed the likelihood, of tax law changes and the election of Donald Trump as the 45th U.S. president is no exception.

In his campaign, the president-elect highlighted several goals of tax reform that included reducing the official corporate tax rate to 15% from the current 35%.

Of interest to the owners of many small convenience store businesses—and their heirs—the estate tax would be repealed if the president-elect's proposals bear fruit. However, capital gains on property held until death and valued over $10 million would be subject to tax, with an exemption for small businesses and family farms.

COMPANIES, PARTNERS AND CORPORATIONS

Most incorporated businesses, so-called "C" corporations, are taxed twice—once at the entity level and again when shareholders pay taxes on dividends and capital gains. In other words, pass-through businesses such as limited-liability companies, partnerships and S corporations, don't pay taxes at the entity level since their profits are passed to the owners and taxed at the individual income tax rate.

There's a general agreement that the marginal tax rate on C corporations is too high, but if that's cut, pass-throughs wouldn't get a reduction and may even face a tax increase. One alternative would be to give pass-throughs a reduced rate compared to wage income, which has been proposed by Trump (a 15% rate cap) and the House GOP (a 25% rate cap). Both plans have a top ordinary rate of 33%, according to published reports.

The most likely scenario appears to tax pass-through entities at 15% but tax again on distributions. That's good news for convenience store businesses that retain a substantial share of their income. It would also increase the tax differential between corporate investment and pass-through investment.

Most corporate tax expenditures, except for the research and development (R&D) tax credit, could be eliminated in exchange for a lower corporate tax rate. So, in order to pay for lower business tax rates, Trump proposes the elimination of certain unspecified "corporate tax expenditures."

DOUBLING DOWN

President-elect Trump has also proposed a doubling of the Code Section 179 small business first-year expensing election from $500,000 to $1 million. That would mean expenditures of up to $1 million for equipment and other business property could be written-off as an expense in the first year.

As the new Congress is seated, it's more than likely the president-elect's proposals will be incorporated into a host of other changes. Where this will end up is hard to predict since, already on the congressional drawing board are a number of tax proposals along with many tax bills that never made it out of committee. More likely, when Congress undertakes the 2018 budget this spring, it will consider these items:

- creating a new business rate for sole proprietorships or pass-through entities instead of taxing them at individual rates;
- reducing the corporate tax rate to 20%;
- providing for immediate expensing of the cost of business investments;
- allowing net operating losses (NOLs) to be carried forward indefinitely and increased by an interest factor, and eliminating NOL carrybacks;
- generally eliminating certain (but unspecified) special interest deductions and credits; and,
- moving "toward a consumption-based tax approach."

In the long run, the overall tax bills for most U.S. taxpayers—including many owners/operators and convenience store businesses—are almost certain to be lowered, but deductions for individuals are very likely to be reduced resulting in higher tax bills. There could be cutbacks in certain tax credits and deductions for particular industries.

In other words, some taxpayers may benefit less than others, making it more important than ever to keep an eye on lawmakers.