NEW YORK STATE ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

September 2010

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Sales Tax Vendor Collection Credit Eliminated For Part-Quarterly (Monthly) Filers

Attention all filers of Form ST-810:

Recently enacted legislation provides that certain filers no longer qualify for the vendor collection credit of up to $200. The change is effective June 1, 2010 and is limited to vendors filing on a part-quarterly basis. This includes vendors enrolled in the PrompTax program.

Tobacco Registration Fee Lawsuit Update

The following is an report from our lawyers on the oral arguments that occurred Tuesday in court.

The appellate court typically attacks both sides at oral argument and rarely telegraphs which way they will rule – as expected, they did this today. Despite this and their normal aggressive posture we still believe that today's oral argument went well.

The Court focused on the Conley affidavit and the injury caused by the implementation of the Statute. Our lawyers argued that that the lower court erred in its determination that there is no association standing, They also explained the disparate impact of the new tax given that it is calculated on the gross sales of all goods sold rather than tobacco products alone.

The Court asked whether the parties would have any objection to the Court deciding the merits of the constitutional questions on this appeal if the Court were to find there was standing. Andrew indicated that it would welcome the Court to decide the constitutional issues and the AG also had no objection. Based on this exchange, if the Court decides in our favor regarding standing it appears likely that they will also decide whether the new fee schedule is constitutional. If the Court decides these issues now we will not have to appear before Judge Feinman again in the lower court.

As anticipated, the Court reserved decision. The AG's office requested that the Court expedite its decision. Given this request, Andrew thinks that the Court will likely render a decision within 30 days.

You should have received registration forms from Tax and Finance indicating that you have two choices -- The first is to pay a fee of 1000 to 5000 dollars depending on sales. Should the Association win this lawsuit then a refund will be issued to the stations. The second choice is to pay the required $100 which represents the previously required registration fee. Should the Association lose this case then the stations would be required to pay an additional fee.

The Association suggests you take the second option. Call the Association with any questions.

NY Appellate Court Allows Indian Cigarette Tax

New York state cleared one legal hurdle Tuesday in its efforts to begin taxing cigarettes sold on Indian reservations to non-Indian customers, but the dominant tribe in the tax-free cigarette market remained temporarily immune from the tax while pressing forward with another lawsuit.

State officials did not immediately say whether they would begin implementing a new law requiring cigarette wholesalers to apply the state's $4.35-per-pack sales tax on cigarettes destined for tribal retailers after a

state appellate court declined to block the law's enforcement.

"We are pleased with the decision and will determine the next steps in coming days," said Brad Maione, spokesman for the state Department of Taxation and Finance.

If collections do begin in the near future, they will not apply to the Seneca Indian Nation, the state's largest tribal seller of tax-free cigarettes, or the nearby Cayuga nation. Both are temporarily exempt through Sept. 28 under a federal judge's order.

As the appellate decision was handed up in Rochester, lawyers for the two western New York tribes were in federal court in Buffalo seeking to expand the temporary order while they challenge the tax law in court.

NY Cigarette Thefts Spike

While New York's recent excise tax has prompted many smokers to quit, it has also led to an increase in theft of the nearly $10 packs.

Since Governor David Paterson $4.35 excise tax on a pack of cigarettes took place July 1, over-the-counter and “smash and grabs” have spiked in Monroe County. Of the 18 cigarette-related thefts reported this year in the county, nearly half of those happened in July.

The thefts have occurred as either a “smash and grab,” whereby the suspects have smashed windows or doors and then grabbed packs of cigarettes, or by distracting cashiers and then stealing the cigarettes and fleeing.

The thefts have focused on Newport cigarettes, a specificity that has police puzzled. Irondequoit Police Sgt. Barry VanNostrand said many of the thefts are made for an intended resale on the streets.

“The environment isn’t such in Irondequoit where it is conducive to people selling individual cigarettes as it might be in the city,” he said. “There are people more frequently out on street corners in the city.”

Theft is not the only law smokers may be breaking. The association said some are crossing into border regions where the New York tax isn't applicable, while others are making trips to Indian reservations.

Local BP Retailers Scrambling for Sales

Consumer animosity is still weighing heavily on franchisees, with BP's local marketing campaigns failing to gain universal traction. Four months after the Gulf oil spill, BP retailers are still scrambling for every customer and fighting for every gallon.

With signs that scream, "Thanks for your support! This BP station is locally owned and operated!" BP retailers have found mixed results in attracting consumers' dollars.

"There has been a bad taste in a lot of people's mouths, especially early on," said Dave Wittekind, director of operations for Burlington-based Deters Co., which owns and operates five BP Blue Pantry convenience stores throughout Northern Kentucky. "But in the last few weeks, I feel like the tide has been turning."

"We can't lower the price to pull people in, because everyone else will just match it - it's that competitive," Wittekind says. "But BP is still a strong brand, and we have no intention of changing. We're going to ride it

out."

Local dealers must convince drivers such as Jacqui Killen of Fort Thomas to revisit BP, a tall task considering her current animosity toward the brand.

"When this all started, all three drivers in our house agreed not to buy at BP anymore. Eleven people died, and this was just another sign of corporate greed and corner-cutting," Killen said. "It has me down on the industry as a whole. I wish I didn't have to buy gas at all after this."

BP officials said they have received claims from all 50 states against the $20 billion compensation fund that it established for those impacted by the spill — including station owners whose sales have dropped.

The gas that local stations sell most likely did not come directly from BP, and BP sells a lot of its gas to other dealers and brands. It's like the money in your bank account that came from your paycheck - once you put it in the bank, it gets mixed in with all the other money."

Despite the severity of the BP spill, the resulting sales drop is likely to be far less than it was for Exxon station owners following the Exxon Valdez spill in Alaska in 1989, as most stations today are locally owned, unlike in 2009 when the majority were run by major oil companies.

In the meantime, BP is spending millions in marketing dollars to reinforce that message as well as lowering prices to distributors in the Gulf region by two cents a gallon through the end of the month, and by one cent a gallon in the Midwest.

"We have also developed some programs to reduce credit card fees and have teams in place to help local dealers," said BP spokeswoman Jessie Baker. However, station owners say sales are still declining.

Valero Says Ethanol Subsidy Not Needed

Valero Energy Corp., the Texas-based ethanol producer with 10 ethanol plants, said earlier this month that eliminating the 45-cents per-gallon biofuel subsidy would not reduce ethanol usage, the Des Moines Register reports.

“You would not see blending down one barrel because of the credit being gone,” said Gene Edwards, Valero’s executive vice president for corporate development and planning.

Edwards said the subsidy benefits refiners and blenders, but because ethanol trades for 30 cents per gallon less than gasoline, the subsidy is "almost irrelevant."

Edwards' comment joins a similar sentiment released by the Congressional Budget Office that suggested ending the subsidy would create relatively modest impact.

Pennsylvania Bill Would Require Full-Service Pumps

Full-service gasoline stations have been vanishing at gasoline stations across the country since the 1970s, but one Pennsylvania lawmaker wants to make retailers once again offer the service, the Intelligencer Journal reports.

John’s Gulf in Lancaster is one of the few remaining gasoline stations with full service, which has provided the benefit since 1924. Fifth-generation owner Mary Kirchner Byerly said customers enjoy the service. “We have a lot of great people coming in here who want that service when it’s cold

outside in the winter and hot like this in the summer," said Kirchner Byerly. "This is history right here."

Now state Rep. Tom Creighton would like other retailers to offer the same type of service. His bill would make gasoline stations with at least six pumps to operate one as full service under state law.

"It is increasingly difficult for individuals who are elderly or disabled to find a full-service gas station," said Creighton, who added that response to the bill has been positive. He plans to introduce the measure this week.

However, not everyone's on board with such a change. "We would not necessarily be in favor of that because a lot of stations that aren't full-service, especially convenience stores, don't have the manpower available to man a pump," said Ross DiBono, director of the Pennsylvania Gasoline Retailers Association & Allied Trades. "If you did have to hire someone, God knows what they would have to charge for full service."

The measure would let retailers charge more for full-service gasoline. Gas stations not complying with the law could receive a fine of up to $500 for each week of non-compliance.

DiBono said a state law is not needed to have service station attendants help those who need assistance pumping gas. "If somebody is handicapped, if they just pull up to the front and blow the horn to indicate they can't pump gas, someone would be happy to come over and put the gasoline in for them," he said.

That's a sentiment echoed by Mike Cortez, a Sheetz spokesman. Sheetz in-store employees receive training in helping drivers who need assistance in filling up.

"What it allows us to do is provide the assistance to those who need it without increasing the cost to everybody by providing an additional person out at the pumps," he said. "This proposal would run the risk of increasing the cost of gas for everybody without significantly impacting the service people can get already."

Only Oregon and New Jersey have laws requiring full service gasoline stations.

Letter From The Tax Relief Coalition To All Members Of The U.S. Senate

Through its national affiliate, Service Station Dealers Association – Allied Trades (SSDA-AT), the association is a member of the Tax Relief Coalition. What follows is a letter sent by the Coalition to members of the United States Senate.

The Tax Relief Coalition (TRC) is an organization of more than 1,000 trade associations, advocacy groups and corporations that was formed in 2001 to advocate for pro-growth tax policies. Our members represent 1.8 million businesses and millions of individuals; businesses of all sizes, from every state and from every industry sector, that invest in our economy and create jobs.

Every company that members of TRC represent has been impacted by the recession, and many have made painful and tough decisions necessary to keep their doors open and their workers employed.

Unfortunately, the decisions that they need to be making now to help revive the economy – decisions to invest capital, expand their businesses and hire new workers – have been put on "hold" in large measure as a result of the anti-business rhetoric and threatened tax hikes confronting

them from Washington. Businesses facing the uncertainty of rising taxes simply cannot risk expending capital today to expand, invest or hire. Without those private sector investments, the economy cannot recover and unemployment will remain at painfully high levels.

The Senate leadership has indicated their intention to consider legislation next month to address the expiration of the tax reductions enacted in 2001 and 2003. Many members of the Senate, including key members from both sides of the aisle, have argued that raising taxes in a recession is flawed economic policy and that all the tax cuts should be extended. That is clearly also the position of the Tax Relief Coalition, and a policy that, if enacted, would remove much of the uncertainty that is causing business to hold onto their capital and not invest or hire.

The tax policies involved are of great importance, and the decisions the Senate makes will impact every American business – every American citizen – in measurable ways. We believe that tax increases would have significant negative consequences and would prolong the recession and unacceptably high unemployment, and outlined that position in detail in a letter to all members of Congress in April [go to: http://www.naw.org/files/TRCletterApril.pdf].

Because of the importance of these policies and the economic impact of Congressional action, the process the Senate follows in considering tax legislation is also of great significance. We firmly believe that the Senate must consider these issues under the regular order of Committee hearings and mark-up, followed by floor consideration by the full Senate if the Committee reports a bill, with open debate and a fair and inclusive amendment process. That is the only way to ensure that these critically important policies – policies with as broad an impact as anything the Senate has considered or is likely to consider this year – are fully and fairly debated.

All too often during this Congress the Senate has considered legislation using procedures that deny full participation of all senators in the formulation of policy. The Leader has repeatedly brought bills directly to the floor bypassing Committee consideration, immediately filled the amendment tree to short-circuit the amendment process, and then filed cloture on the legislation.

In fact, the Majority Leader has filled the amendment tree on legislation 35 times this year alone – more than the last five Senate leaders combined.

The practice of filling the amendment tree and filing cloture before legislation is openly debated and amended silences dissent and abridges the rights – and, frankly, the obligation – of all senators to participate meaningfully in the consideration of legislation on behalf of their constituents. This closed-door process of filling the amendment tree effectively disenfranchises 99 senators – and the constituents of 49 states – by permitting amendments to be offered by only the Leader.

This process does a grave disservice to the historical and Constitutional role of the Senate. The House of Representatives, with its large membership and necessarily restrictive rules of procedure, is in some ways a more democratic institution today than is the U.S. Senate.

The tax legislation to be considered by the Senate is too important to be considered under procedures which relegate both the minority and dissenting members of the majority party to the role of mere bystanders. What the Senate does will

determine whether the cost of doing business will rise for many employers, whether businesses will feel confident to make the decision to invest and hire, whether the government sees fit to take hundreds of billions more from the private sector in new taxes during a recession.

These decisions will have serious – and possibly damaging – consequences on consumers, employers, workers, and those seeking jobs that are now not being created.

We urge all members of the Senate, of both political parties, to insist on an open, transparent and fair debate on tax legislation this year. All senators owe that to their constituents, and to every American. By allowing discussion on the long term economic benefits and job creation potential of lower taxes, we are confident Senators will appropriately vote to extend the 2001 and 2003 tax cuts.

Sincerely,
The Tax Relief Coalition Management Committee

Small Businesses Eligible for Up to $10.4 Billion in Tax Breaks Under HIRE Act

According to an Aug. 2 report from the Treasury Department, American employers who have hired unemployed workers this year could be eligible to receive an estimated $10.4 billion in tax breaks under the Hiring Incentives to Restore Employment (HIRE) Act of 2010.

The report states that 5.6 million workers had been hired for at least eight weeks from February to June of this year, making their employers eligible for $6.2 billion in tax credits. If three-fourths of the newly-hired employees remain employed for 52 weeks, the employers would be eligible for an additional $4.2 billion in exemptions.

The HIRE Act permits employers to claim an exemption from the 6.2 percent Social Security payroll tax for 2010, along with a $1,000 tax credit if they retain the employees for a year. The legislation requires that the newly-hired workers have been unemployed for at least 60 days prior to their hiring. At an Albany, N.Y. news conference on the report, Sen. Charles Schumer, D-N.Y., and Rep. Paul Tonko, D-N.Y., indicated that they would sponsor legislation to extend the HIRE Act for at least six months past its scheduled Dec. 31, 2010 expiration date.

Judge Refuses To Further Delay Enforcement Of PACT Act

Mail-order cigarette sellers from the Seneca Nation and elsewhere were handed another setback Thursday in federal court. U.S. District Judge Richard J. Arcara refused to delay the enforcement of a new federal law that prevents businesses from selling cigarettes through the mail.

Seneca Nation businesses oppose the law, saying it will decimate the tribe's lucrative mail-order tobacco industry, which has provided jobs to thousands of Senecas while turning a few into millionaires. The Seneca businesses are expected to continue their appeal of Arcara's earlier decision upholding the law, but the case now moves up to the 2nd Circuit U.S. Court of Appeals.

So far, the Senecas have "failed to establish a clear likelihood" that their appeal will be successful, Arcara wrote Thursday in an eight-page ruling, rejecting their request to delay enforcement pending appeal. "Preventing [cigarette sellers] from using the mails pending appeal will undoubtedly impact the profitability of their business,"

Arcara wrote. "Postal delivery clearly represents the most efficient and most cost-effective means for delivery of their products. However ... it is not the only means, and alternative ways to deliver their products do exist."

The judge also refused to grant a motion by the federal government, which wants to force cigarette sellers to proactively pay billions of dollars in state and local taxes for all tobacco sales. News of the ruling distressed Rick Jemison, chairman of the Seneca Free Trade Association, which represents about 140 tobacco companies owned by members of the Seneca tribe.

"Thousands of people are going to be out of work ... they already are out of work," Jemison, a former member of the Senecas' Tribal Council, said. "This law is just wrong. It's a law promulgated by big tobacco companies and Congress to prevent competition. They're in bed together." Jemison said he "most certainly" wants to continue the court fight, all the way to the U.S. Supreme Court if needed. But he said the next legal steps will be determined after he meets with other members of the association.

The ruling relates to the Prevent All Cigarette Trafficking Act, which went into effect in late June. The law, widely known as the PACT Act, bans businesses from selling cigarettes through the mail. Supporters of the law say its aim is to prevent untaxed cigarette sales and to prevent teenagers from buying cigarettes through the mail. They say the Senecas are by far the largest mass marketers of cheap cigarettes in the United States.

One anti-smoking group, the Campaign for Tobacco-Free Kids, estimates that 3.4 million Americans under age 18 are regular smokers. The group alleges that tobacco Web sites, such as those run by the Senecas, make it easy for teens to illegally buy cigarettes.

"[Congress] found that remote sales facilitate illegal trafficking and undermine measures that are used to curb demand for tobacco products," U.S. Attorney William J. Hochul Jr. said in court papers. Seneca Nation smokeshop owners filed a legal challenge to the law in late June.

On July 30, Arcara ruled that the government has the legal right to ban the mailing of cigarettes, but he said the tax collections ordered by the law were not legal. Seneca business owners claim it is unreasonable and illegal to force them to pay state and local taxes in every town and city where they send cigarettes. Government attorneys disagree.

Seneca business owners asked Arcara to delay the government ban on mail-order cigarette sales until their appeal can be heard. The Senecas say many of their mail-order smokeshops already have gone out of business because of the new law. "Businesses have stopped operating, and people have lost jobs," said Lisa A. Coppola, an attorney for a tobacco business owned by Seneca Nation member Aaron Pierce. She said Pierce is trying to develop methods of delivering cigarettes to customers, without using the U.S. Postal Service.

Postal Service Relaxes Rules On Mailing Cigarettes To Soldiers

The PACT Act (Prevent All Cigarette Trafficking Act), which restricts the mailing of cigarettes and smokeless tobacco, has been amended to give the friends and families of soldiers a cheaper way to mail these products to them.

The revision allows cigarettes and smokeless tobacco to be mailed using Priority Mail with Delivery Confirmation service. Originally, the PACT Act only allowed the use of Express Mail service when mailing these items to military addresses, meaning those addresses which include the designations APO, FPO, or DPO (Army Post Office, Fleet Post Office, or Diplomatic Post Office). Express Mail Service is much more expensive than Priority Mail with Delivery Confirmation, which would have placed a greater financial burden on the mailer, who often turns out to be a family member of the soldier who sends mail to them frequently. This change is effective on August 27, 2010.

The PACT Act largely prohibits the mailing of cigarettes and smokeless tobacco through the U.S. Mail, although there are exceptions. Residents of Hawaii and Alaska may mail to other residents in their same state. Shipments are allowed between verified and authorized tobacco industry businesses and federal or state agencies for regulatory purposes. Age-verified adult individuals (18 years old or the individual states legal smoking age, if higher) may mail 10 ounces or less of tobacco at a time to another person, but may not send more than 10 shipments every 30 days. Persons receiving the cigarettes must show proof that they are of legal age in order to receive the tobacco products. Cigarettes may also be mailed by authorized manufacturers to verified adult smokers, age 21 and over, for consumer testing purposes. Shipments to foreign countries are prohibited. Surprisingly, cigars are not regulated under the PACT Act at this time, and may be mailed without restriction in the United States and internationally unless specifically prohibited by a country.

The change allowing the use of Priority Mail with Delivery Confirmation for APO/FPO/DPO military addresses is an exception to the rule, as all other types of shipments are allowed to use Express Mail Hold For Pickup service only. Otherwise, all other restrictions apply to military mailings, such as the 10 ounce and 10 mailings every 30 days limits. It is assumed that members of the armed forces are at least 18 years old and are therefore of legal age to receive the tobacco products.

Background on Mid-level Ethanol Testing for E15 Allowance

The EPA's timeline for decision making ignores additional testing underway that will not be completed by this fall. These tests are designed to determine whether and to what extent emissions systems issues and vehicle performance issues may exist for a wide range of cars.

The EPA has neglected to address safety concerns for off-road vehicles. At the same time, consumers have raised issues regarding usage of gasoline with 10 percent ethanol in marine engine applications. Thus, full testing must be completed on such off-road devices. Further, testing has shown that fuels with increased oxygen, such as E15, can cause:

- Check engine lights to malfunction
- Significant catalyst deterioration
- Reduced engine durability
- Valve seat wear
- Catalyst damage
- Reduced fuel pump durability

Failures could result in poor performance, loss of engine power, or fuel leaks Most concerning is the unknown. The automotive, petroleum and outdoor equipment industries cannot properly mitigate performance and safety concerns without complete testing to identify susceptible equipment. Existing owner manuals only warranty fuels containing up to 10% ethanol, and auto companies would have to change the 10%

ethanol warranty limit if EPA approves up to 15% ethanol. However, auto companies may be reluctant to do so absent a robust and reliable test program.

The auto, oil and non-road equipment industries are committed to ensure American consumers are delivered a fully tested, effective product that leads to a positive experience with alternative fuels. Premature approval of E15 has the potential to lead to vehicular and/or engine failure. Public backlash against all ethanol products may follow.

EPA is proposing to grant a "partial" waiver where some of the vehicles in the fleet can use the higher ethanol blend but not others.

By proposing a "partial" waiver EPA recognizes the dangers of using these fuels. However, any "partial" waiver must be preceded by rulemaking that develops labeling measures aimed at preventing both accidental and intentional misfueling of non-waived equipment. A partial waiver would increase infrastructure complexity, consumer confusion, and potential misfueling problems associated with a bifurcated distribution system.

The best way to introduce a new gasoline to market is to ensure through comprehensive testing that the product is safe and effective to use in all gasoline-fueled vehicles and devices. Anything short of this standard requires an extensive consumer education campaign.

The EPA has stated that it is prepared to allow E15 for 2001 model vehicles and newer. This would put off-road devices, pre-2001 models and non- Tier 2 vehicles at risk. The pre-2001 vehicle fleet constitutes over 45% of the registered vehicles in the US. The EPA has not disclosed a plan to educate consumers about E15 usage. This plan must include sufficient information so that consumers can pick the right fuel for their engines.

General Counsel Corner
By Peter H. Gunst, Esquire
To BP or Not to BP

Independent BP dealers suffer through guilt by association as a result of the Gulf disaster. A recent article in the NY Times reported:

BP owns fewer than 2 percent of the 10,000 stations across the country that carry its brand, but that did not spare its independent station owners from boycotts, protest, vandalism and customer tirades about fuel beaches and oiled wildlife during the more than three months that crude flowed into the Gulf of Mexico.

Small wonder some dealers have attempted to break free of the long-term supply agreements and restrictive covenants that tie them to BP.

When Virginia dealer Charles Stanley exercised a right of first refusal to purchase the service station that he had leased from BP, the non-negotiable deed contained a restrictive covenant that prohibited him from operating a service station or from offering for sale at the premises a large range of petroleum products – consisting of "petroleum, gasoline, motor vehicle fuel, diesel fuel, kerosene, benzol, naphtha, greases, lubricating oil, or any fuel used for internal combustion engines, or lubricants in any form, or petroleum or petroleum-related products" – other than in connection with a BP branded service station for a period of 15 years.

Mr. Stanley's station operation was not successful. The BP-branded fuel offered him by his local distributor was not priced

competitively, so he operated his station solely as a service and inspection site from July 2008 to July 2009. When he advised BP that he believed that the deed restriction was unenforceable and began selling an alternative brand of fuel, BP sued to enforce the restrictive covenant.

In an opinion issued by the United States District Court for the Eastern District of Virginia, styled BP Products North America, Inc. v. Stanley, the court entered summary judgment freeing the dealer from his long-term commitment to BP.

In ruling against BP, Judge Brinkema emphasized the disfavor with which Virginia views covenants restricting the free use of land, or intended to restrain trade within the state or to limit employment opportunities.

BP's covenant did not pass muster, Judge Brinkema ruled, because it went far beyond merely protecting BP's legitimate interests. Thus, it restricted trade from the sale of automotive lubricants, naphtha, benzol, kerosene, greases and lubricating oil to the public, even though BP admitted that it did not sell those products to any service station in Virginia.

Further, the covenant restricted all automobile service station operations even though BP conceded that it did not offer repair services at any facility within the state, and did not compete nor receive any revenue from automotive repair services within the state.

BP urged that, in any event, the court should save the covenant in a more restricted form by "blue penciling" it to prohibit only the sale of non BP-branded fuel. Judge Brinkema declined to do so.

The court explained that BP's "vastly overbroad restriction" was not worthy of any protection at all. Because it was contained in the deed, it could have a negative impact on Mr. Stanley's ultimate ability to sell his station. Further, the court could find no justification for letting BP off the hook by rewriting a covenant that it had drafted erroneously in the first place.

The court's decision gives some hope to dealers caught in the same bind as Mr. Stanley. It must be noted, however, that the court's decision is based solely on Virginia law, and that another state may have a different view concerning the enforceability of restrictive covenants, or the propriety of applying a "blue pencil" to save them from total extinction.

Jobber Group Fights Insurer Over Leak Coverage

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An insurance company claims that it doesn't have to pay a jobber's clean-up costs for a huge leak because he never actually took possession of the fuel.

The Petroleum Marketers Assn. of America says it is quite common for a marketer to have fuel delivered to an account without actually taking physical possession of the fuel, which is why it has now filed a "Friend of the Court" brief to support New York jobber Griffith Oil in a lawsuit against National Union Fire Insurance.

The insurance giant cited a provision in its policy which, it said, created an exception for spills of product that was never in the possession of the insured. A lower court agreed with the carrier, but its decision was overturned on appeal. The carrier has now appealed to New York's highest court seeking to reverse the appeals court ruling.

PMAA signed onto the case at the request of

United Policyholders, a consumer rights group. It argued that fuel is often sold by jobbers to retailers and end-users in a process that does not include the distributor taking actual possession of the product. For example, many marketers use common carriers to haul product from the rack to a third-party retail site without ever taking possession.

In the course of that business, a marketer buys insurance to cover the product, whether or not he takes actual possession of it, rightly expecting that will be covered against liabilities. Furthermore, New York courts have ruled that "any ambiguity in an insurance policy should be resolved in favor of the insured," said PMAA.

PMAA and United Policyholders are urging the New York Court of Appeals to affirm the appellate decision.

Minimum Age For Cashiers Who Sell Alcoholic Beverages

The regulations for clerks who sell alcoholic beverages taken from page 7 of the State Liquor Authority Handbook are as follows:

1. Clerks and cashiers who handle and receive payment for alcoholic beverages in drug stores, grocery stores and convenience stores must be at least 16 years old and must be supervised by someone who is at least 18 years old.
2. Clerks and cashiers in liquor and/or wine stores must be at least 18 years old.

Did Your Worker's Comp Policy Give You 35% Of Your Premium Back Last Year?Call The Association Today To Receive A Price Quote

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of drivers license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. To use this service, please call 518-452-4367.

We Have Changed Our Web Address

The Association is pleased to announce a new web site. The old website has been completely revamped to provide you with easier faster access to the information you need. The new address is

www.nysassrs.com

Our e-mail address has changed to:

state@nysassrs.com

In addition to being able to read back issues of newsletters, and providing you with links to important sites we have added a bulletin board to keep you better informed as stories break.

WARNING

YOU CANNOT DO INSPECTIONS IF ANY OF YOUR EQUIPMENT IS MISSING OR INOPERABLE.

PERFORMING AN INSPECTION UNDER THESE CONDITIONS CAN RESULT IN REVOCATION OR SUSPENSION OF YOUR INSPECTION LICENSE

FORM 1099 NIGHTMARE COMING IN 2012
SSDA-AT WANTS YOU TO HELP STOP IT

As a result of the Patient Protection and affordable Care Act signed this year, beginning with payments made in 2012 every business will be required to issue to any vendor of services OR property to which the business has paid more than $600 a year for those services or property, an information reporting form known as Form 1099. The Form 1099 must also be sent to the Internal Revenue Service. In addition to issuing the forms, a business will have to get Taxpayer Identification Numbers (TINs) from all of those vendors and withhold payments to any such vendor until it receives the TIN. Penalties apply if you fail to issue the Forms 1099.

Under the existing law, businesses issue the Form 1099 only to individuals who provide services to a business. The new law makes two changes: the Form 1099 must be issued to corporations of all sizes and shapes as well as to individuals AND a Form 1099 must also be issued to individuals and corporations that provide property to a business.

The payments that are included under this are not only those made directly by check but also those made by other means such as credit cards, for example. Think about the airlines, hotels, rental cars, and restaurants that appear on your credit card bill. You might not think of them as vendors of goods and services, but that is what they are. Also, if you are in the business of selling or distributing goods, all of your suppliers of products are also vendors under the new law. (Under existing law there are regulations that provide narrow exceptions for some types of vendors (telegrams, telephone, freight, storage) and some individual vendors that accept payment from you by credit card and meet qualifications set forth by the IRS. Even if some regulatory exceptions are carried over under the new law, you will still be the one responsible and liable for issuing the information report and it will not be easy.) And Congress is considering doubling the penalties.

And, of course, any business that pays you more than $600 will be sending *you* a Form 1099.

Representative Daniel Lungren (R-CA) has introduced bill H.R. 5141, The Small Business Paperwork Mandate Elimination Act. Senator Mike Johanns (R-NE) has introduced S.3578, its sister bill.

SSDA-AT, as well as other organizations, has signed a letter of support to Rep. Lungren and Sen. Johanns.

TAKE ACTION

If you want to send emails to your Senators and Representative, go to www.stopform1099.org.

But do not stop there, call your Senators and Representatives (202-224-3121) and deliver the message you will find at www.stopform1099.org.

RSGDAofWNY

Repair Shop and Gasoline Dealers Association of Western New York

Member Legal Services Plan

Administered by
KENNEY SHELTON LIPTAK & NOWAK, LLP

Dues paying members in good standing with the Association are entitled to participate in our group legal services plan that provides the following services:

- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any court other than Small Claims or in any matter where the member is charged with a misdemeanor or felony.

- Additional legal services for covered services as listed above, and representation in business-related matters brought in any court other than Small Claims, will be provided at the law firms standard hourly rate ($200) less 25% member discounted rate ($150).

- One hour of free consultation per year for business-related transactions, including leases, supply contracts, and franchise agreements.

- Real estate (residential) purchase or sale at a flat fee rate:
  Sale $400
  Purchase $400

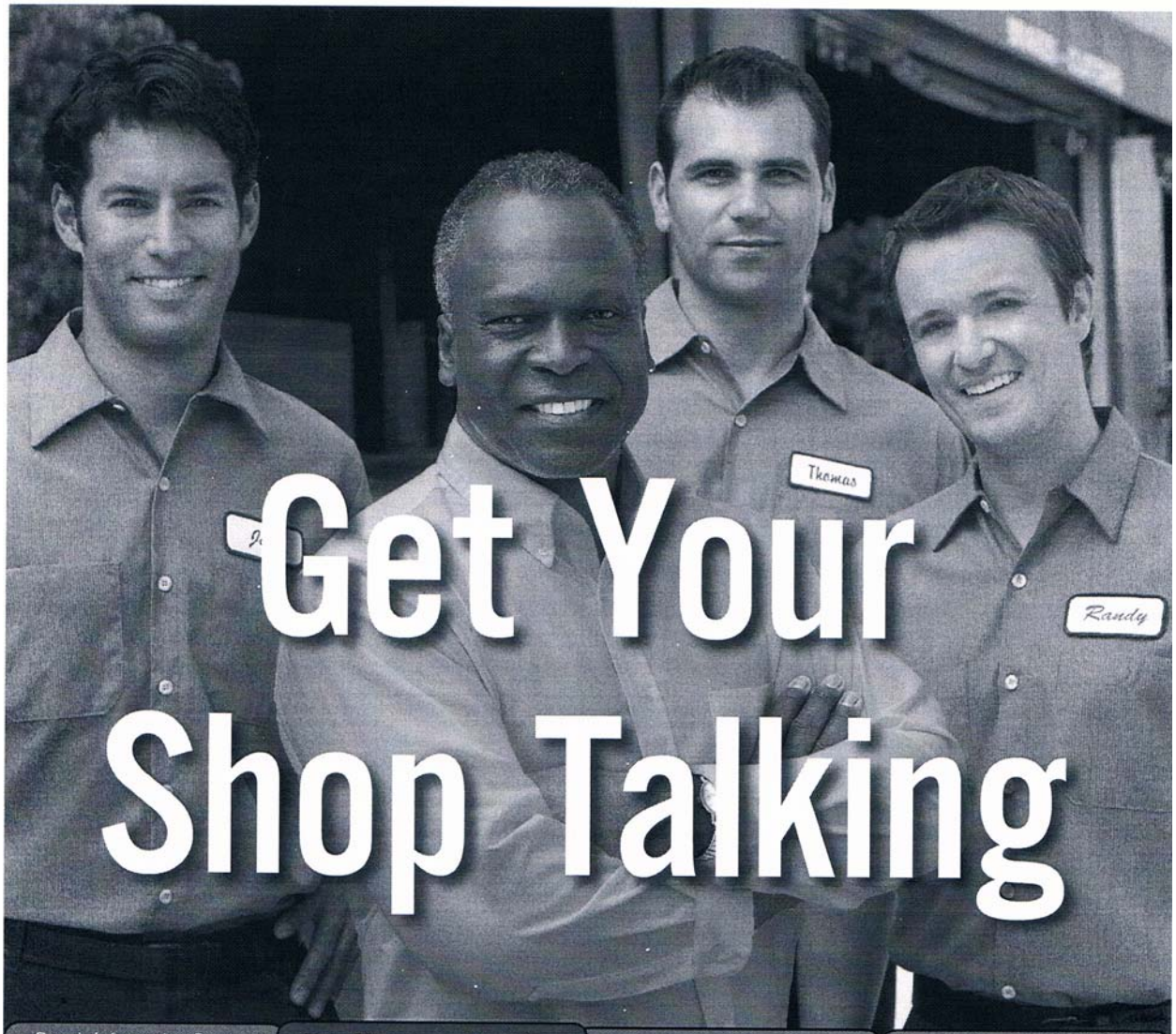
- Estate planning at a flat fee rate:
  Simple will (single) $100
  Simple will (husband and wife) $150

In order to participate in the plan, you must be a dues paying member, in good standing, and must have been a member for at least ninety days prior to the need for legal services.

If you are in need of this service, you must first call the association office at (585) 423-9924 or (716) 656-1035. The association will then contact the law firm to relay your information. You will be contacted by the law firm, personally, to schedule an interview.

The law firm of Kenney Shelton Liptak and Nowak, LLP was chosen to administer the RSGDAofWNY legal plan based on their knowledge and familiarity with the needs of our industry.

To become a dues paying member of RSGDAofWNY and be eligible for legal services, call (716) 656-1035



Get Your Shop Talking

Repair Information Services | **Shop Management Solutions** | Business Performance Services | Business Information Solutions

Mitchell1® TeamWorks™

Mitchell 1 TeamWorks combines the features of Manager, Estimator and Repair to seamlessly integrate all parts of your shop. From the moment your customer walks in the door, TeamWorks allows your Service Advisor to look up customer and vehicle information, calculate time to diagnose, check TSBs and prepare an estimate. Parts advisors order and track parts from your favorite vendors. Techs pull up work requested with associated diagnostic and service information, and enter recommended service. That's the kind of shop talk you can turn into profit!

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Mitchell1® eCRM™

Now you can turn customers into loyal, profitable repeat customers easily. Mitchell 1 CRM integrates seamlessly with your shop management system to track your customers' vehicle history and send timely scheduled service reminder postcards and e-mails automatically. You choose the postcards and customize with your logo and message – finally, a way to communicate your message to your customers that they'll be glad to receive.

- Service Reminder E-mails & Postcards
- Consumer Vehicle History Website
- Service Recommendations
- Custom Promotions
- Dedicated Marketing Support Center
- Return on Investment Reporting

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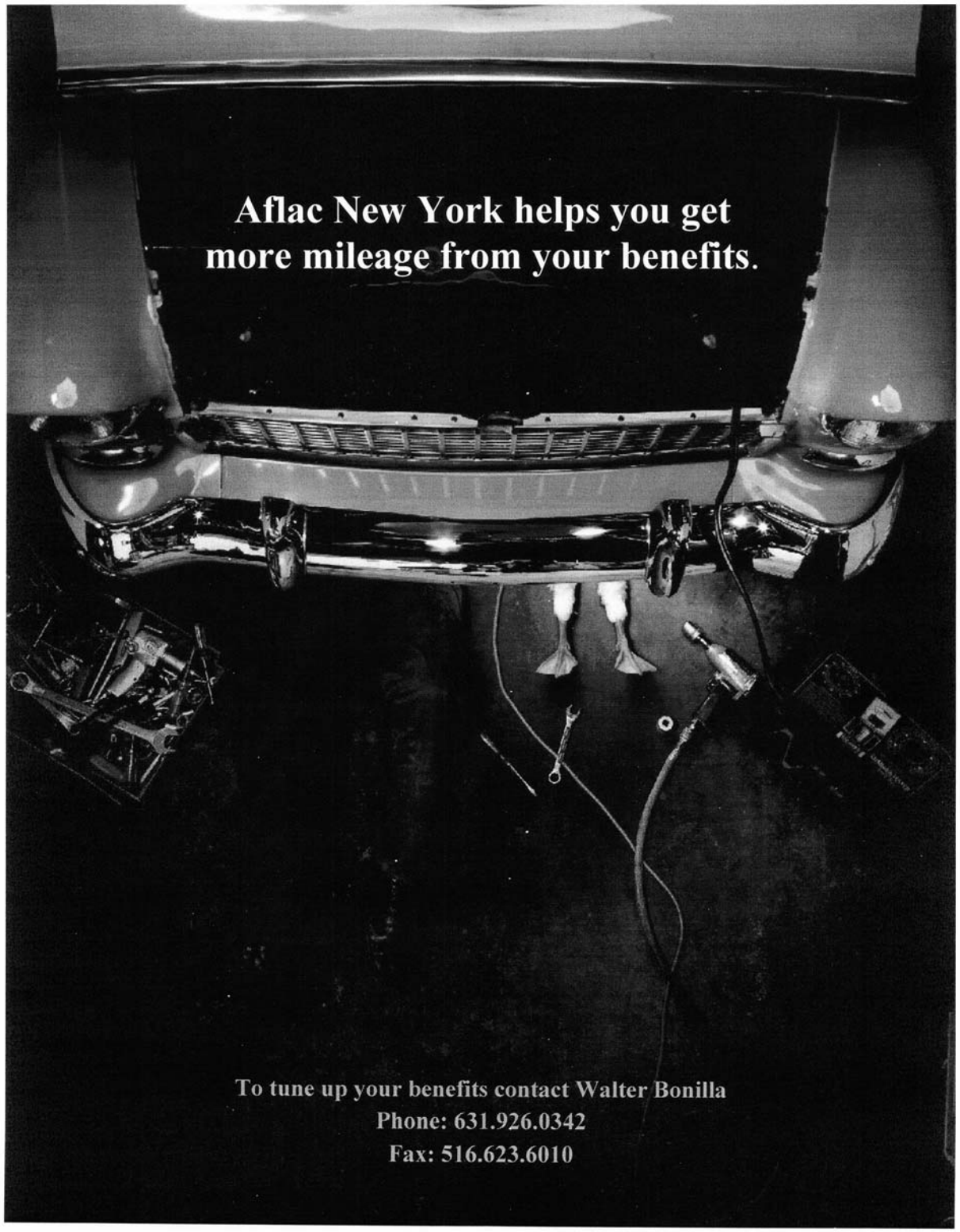
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To tune up your benefits contact Walter Bonilla
Phone: 631.926.0342
Fax: 516.623.6010

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HERE'S HOW AFLAC NEW YORK CAN HELP:

Many industries-like specialized auto repair and customization-require highly skilled talent that is not easy to find and retain. Great benefits are a top priority for these talented professionals when considering where to work. With Aflac New York, you can provide a wide range of benefits that gives them coverage in the areas they need most, and with a brand they know and want. You can attract and retain new talent by providing the kind of benefits they'd expect from a bigger company, helping your business stand out from the crowd.

THE BEST PART ABOUT AFLAC!

NO DIRECT COST TO YOUR COMPANY

Aflac New York's insurance policies are paid entirely by your employees; therefore, adding value to your employee benefits plan without incurring direct costs.

OFFERS A WIDE RANGE OF POLICIES

Aflac New York offers a wide range of policies that can help cover health events from accidents to hospitalization. You choose the ones that are best for you, your employees, and your business.

POTENTIAL TAX SAVINGS

Aflac New York's tax-advantaged plan allows employees to use pre-tax dollars to pay for certain benefit costs, through a Section 125 cafeteria Plan. This plan may also reduce your FICA taxes, helping you counterbalance the challenges you face in today's economic environment.

ATTRACTIVE TO YOUR EMPLOYEES

Aflac New York insurance complements your major medical insurance to help you create a more attractive employee benefits package. Our wide range of policies is designed to provide cash benefits to your employees if they become injured or sick. With Aflac New York policies, there are no deductibles, copayments, doctor networks, or pre-authorization requirements.

Join the 16,500 companies* that Already include Aflac New York as an essential part of their benefits package. Find out more:

Walter Bonilla **1.631.926.0342** **walter_bonilla@us.aflac.com**

American Family Life Assurance Company of New York (Aflac New York)

The NAPA Major Account Program

*** FREE MONEY GIVEAWAY***

Want to put more money in your pocket and do nothing more than you do now?

You already buy parts and supplies for your business so why not buy from NAPA and earn 2% rebate!

The Association and NAPA developed a complete, competitive supply program designed to boost your backroom profits and meet your customer needs. Here's what it includes:

BENEFITS TO ASSOCIATION RETAILER

Quality Products that meet or exceed OEM specifications
Customized Pricing -Reduced Parts Costs
Improved Inventory Turnover
Less Downtime -Higher Gross Profitability
Increased Field Contacts -700 Factory Representatives
Consistent Manufacturers Throughout Our System
Consistent Nationwide Parts Warranty
Availability -Up to 342,000 Part Numbers
Broader Inventory Coverage
Obsolescence Protection
Tailored Local Inventories
Recognized Consumer Brand
More Effective Shop Inventory -Reduced Investment and Higher Productivity
Prolink Internet based catalog, 24/7 parts availability and pricing

PROFIT PLAN

Very competitive pricing on **NAPA** Premium and Value Line products
Special quarterly stocking incentives
Quarterly product discounts to enhance competitive pricing during key selling seasons
Discount on electronically ordered parts from participating stores
Prompt payment discount terms (2% 10, Net 20)

A BRIEF LOOK AT NAPA

Since 1925, **NAPA** (**National Automotive Parts Association**) has helped businesses expand their parts coverage and maximize turnover and ROI. They offer an unparalleled package for people, products and programs to increase your productivity:

More than 5,800 **NAPA AUTO PARTS** Stores Nationwide

- Strategically located Distribution Centers servicing all 50 states
- Computerized inventory control linked to your station
- Highly trained Factory Reps.
- Training for you and your employees

(O V E R)

Now…what do you have to do to participate in the NAPA Program? It's easy. You just have to:

Register in **NAPA** Major Account Program with the Association
Stock a minimum of four product lines
Designate **NAPA** as first call supplier, and
Purchase a minimum of $7,500 per quarter (Average $2,500 per month)

It couldn't be easier so why not join today. **No risk**….if you don't meet the quota you just don't receive the rebate, nothing lost….but additional profit could be gained!

Name of Your Business:		
Business Address Street:		
City:	State:	Zip:
Phone:	Fax:	E-mail:
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Additional NAPA Dealer(s) you do business with:		
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	
Name of NAPA Dealer:		
NAPA Street Address:		
City:	State:	Zip:
Phone:	Fax:	

FAX this form back to:
518 452-1955