
NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

6 WALKER WAY, ALBANY, NY 12205
(518) 452-1979 – state@nysassrs.com – www.nysassrs.com

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Wholesale Gas Prices in New York State Rise Again

The following press release has been sent to newspapers and television stations across New York State

In 2002 a United States Senate subcommittee on investigations determined that the decrease in competition among major oil refiners had made it possible for them to manipulate markets. Essentially, by artificially reducing the volume of gas available to motorists, major oil companies could create an apparent shortage and make windfall profits. The subcommittee was even able to pinpoint evidence that some oil companies were considering collusion to make this happen.

Does this sound familiar? Reported low stocks of gasoline have recently driven prices for regular gasoline through the \$3.00 ceiling, and there appears to be no end as to how high they will go. The reason given for the low gasoline stocks is refinery shutdowns and maintenance.

The association calls on New York Attorney General Andrew Cuomo, our state legislature, and our federal representatives to investigate the recent spike in gas prices. We ask that they determine whether gasoline stocks are really as low as reported, and if the refinery shutdowns are really coincidental or for the purpose of manipulating the market.

New Sales Tax Chart

Please find enclosed a new sales tax chart. This has been made necessary for several reasons. On March 1, 2007, Albany and Saratoga county joined Schenectady county in rescinding its sales tax cap. Dealers in these locations are in need of a new chart. Most other gasoline dealers are now pushing the limits of previous charts due to the high price of gasoline.

Article 20, Agriculture and Markets Law, Food Service Licenses

Convenience stores that sell food that needs to be heated or repackaged, must apply of a food processing establishment license. Coffee is not covered by this requirement but cappuchino is. There is a biennial license with a fee of \$200.00.

When filling out the application attention should be paid to section eight. It deals with information that will decide if the facility needs to have an individual on staff that has been certified by an approved training agency through an eight-hour training course. The bases for an exemption is if the facility does, are affiliated with, under the direct or indirect control of a group of businesses that do over \$3,000,000 is convenient store sales annually. This dollar amount does not include petroleum product, lotto or cigarette sales.

Remember, if you are exempt from the training requirement the answer to question eight is "YES". An answer of "NO" means that your food service manager must be trained. Please be careful answering this question .Call the association for more information.

Bill Number A.7859 - Authorizes Tire Retailers to Charge Up to 2.50 Per Tire for Recycling

The subject bill amends the New York State Environmental Conservation Law relating to waste tire management. Current law requires tire retailers to include waste tire management and recycling costs in the selling price of a new tire. This bill would allow tire retailers to include waste tire management and recycling costs in the selling price of the tire or make it a separate line item on the bill of up to \$2.50 per tire.

This bill authorizes tire retailers to charge a separate and distinct fee of up to \$2.50 for waste tire management and recycling costs. The fee would be required to reflect the actual waste tire management and recycling costs to the tire

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retailer and would be listed separately on the invoice and in the published selling price of the tire. The bill also requires the tire retailer to inform the customer that the fee is charged at its sole discretion.

The Waste Tire Management and Recycling Act of 2003 was enacted to ensure the proper management of waste tires in New York State. The law established a \$2.50 charge on every new tire sold. Twenty-five cents of the \$2.50 goes to the retailer to cover their costs associated with used tire disposal.

The current law does not permit tire dealers in New York to add an additional charge that is incurred for tire disposal. The State tells the industry to add the additional cost into the new tire price. This results in New York tire retailers being in a less than competitive situation. This results in many sales going to Border State and Internet sales.

The insufficient \$0.25 per tire reimbursement is significantly lower than the actual costs of disposal of a used tire. This could lead to illegally disposing of waste tires.

This bill will ensure that all tire dealers are reimbursed for their costs and that all used tires will continue to be disposed of properly.

For the above reasons the Association supports this bill and urges it become law.

S.453 – Seeks To Increase Presumed Cost of Doing Business For Agents and Wholesale Dealers of Cigarettes

The bill amends subparagraph (b) of paragraph 1 of subparagraph (b) of paragraph 2 of subdivision b of section 483 of the tax law, subparagraph (b) of paragraph 1 as amended by chapter 1 of the laws of 1999 and subparagraph (b) of paragraph 2 as amended by chapter 4 of the laws of 1988 to increase the presumed cost of doing business from seven-eighths of a percent to three percent of the basic cost of cigarettes for sales to wholesale dealers. Increases from one and one-half percent to four and one-half percent the percentage of the basic cost for sales to chain stores and from three and seven-eighths percent to seven percent of basic costs for sales to retail dealers.

All percentages are in addition to a fixed component, left unchanged, of plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes, and two and one-half cents per package exceeding twenty cigarettes. Also provides that the cost of doing business of the wholesale dealer making a sale with respect to sales to retail dealers shall be presumed to be increased from three to four percent of the basic cost, and from five-eighths to one and five-eighths percent of the basic cost with respect to sales to chain stores.

The Sponsor justifies his bill stating that the rising costs to wholesale and retail sellers of storing and transporting cigarettes, as well as decreased sales volume due to recent increases in New York's cigarette tax.

THE BILL DOES NOT HOWEVER ADDRESS AN INCREASE IN THE RETAILER'S MARGINS

Cigarette Minimum Markup Issue – Explanation of Association Concerns

- Q. What does the retailer need to level the playing field.
- A. First, the wholesale price has to be balanced. The wholesale prices paid by retail chains and independents under the Cigarette Marketing Standards Act (CMSA), has been in place for 20 years and is of discriminatory against smaller retailers. Second, the retailer needs to get more gross margin. In order to do this the minimum needs to be increased.
- Q. How way does the current wholesale pricing system discriminate against small business?
- A. The law states that retail chains with 15 stores or more, and franchisees of large companies can purchase cigarettes from their wholesale distributor at about \$1 per carton less than those with 14 stores or less. Both classes are required to conform to the same statutory minimum retail price. This formula guarantees chains higher gross profit on every pack they sell. This forces competing independent small stores to either price at state minimum and make a small profit, or charge above-minimum prices and risk losing customers to the chains.
- Q. What changes are we looking for?
- A. The wholesale and retail levels should be combined into a one tier structure. The 1½ percent agent-to-chain minimum markup and the 3⅞ percent agent-to-retail minimum markup in a unified 4 percent agent-to-retail minimum markup.
- Q. Why is a higher retail minimum markup is needed?
- A. First there is the ever-present failure by New York to collect of taxes on Indian sales of cigarettes to non-Indian. Cigarette sales are lost to New York retailers because of lower prices in surrounding states and Internet sales. In addition, manufactures have reduced display allowances that contributed to tobacco sales profitability. *We need higher retail margins.*
- Q. What's going on at the Legislature?
- A. Bill S.453 increases the minimum markups for wholesalers but does not increase the retail-to-consumer minimum markup. This bill will be opposed until it is amended to include an increase to the retailer. In the 2007 session Senator Golden re-introduced his original bill S.453 with a wholesale-only increase. This bill has been reported to the Senate floor. The wholesalers jumped on another bill, Senator Volker's cigarette tax stamp bill, and tied the markup and linked that bill to the new budget.

Language in Law That Needs Changing:

- The current law exempts the privilege of lower prices to conveniences stores that sell motor fuel and are included under Article 11 of the New York State Business Law. This needs to be changed.
- The retailer is still not mentioned in any bill.
- There are discussions going on in Albany with the

intention of requiring that all tobacco sales to a retailer be “cash on delivery” (cod).

We are in discussions with the legislature to be sure that the retailers needs are addressed.

S.4260 – Amends Lien Law

The subject bill amends the New York State Lien Law, in connection with sale of vehicles to satisfy a lien. It allows for property worth less than five hundred dollars to be sold at private sale to satisfy a lien. The sale may take place thirty days after notice is mailed to the property owner. A motor vehicle sold under the provisions of the current law or this proposed amendment cannot be re-titled and must be sold to a registered vehicle dismantler or scrap processor licensed the New York State Department of Motor Vehicles.

In essence this bill seeks to raise the total value of the property that may be sold at private sale from \$100.00 to \$500.00. It also decreases the time between when notice is served on the owner and lien holders and the date of sale from six months to thirty days. The purpose of this proposal is to adjust current law, which was enacted in 1968, for inflation. In this regard, the CPI inflation calculator estimates that \$100.00 in 1968 dollars is worth %551.40 today.

The requirement for a motor vehicle to be sold to a registered vehicle dismantler or licensed scrap processor provides additional protection for because dismantlers and processors are required to provide detailed information to the Department of Motor Vehicles that the stated value of a motor vehicle is accurate.

The association supports this legislation and will work towards its passage.

Motor Vehicle Owners Right to Repair Act

The Issue: Modern cars and light trucks contain advanced technology that monitors or controls virtually every function of the vehicle including: brakes, steering, air bags, fuel delivery, ignition, lubrication, theft prevention, emission controls and in some cases, tire pressure. Car owners and independent shops must have full access to the information and tools necessary to accurately diagnose, repair, or re-program these systems. This information and equipment is necessary to ensure vehicle safety, performance, and environmental compliance. Vehicle manufacturers are making access to such vital information increasingly difficult and costly to obtain for the independent aftermarket and its customers.

Impact on Consumers and the Aftermarket: Without access to critical information and tools, motorists are forced to patronize new car dealerships, which may not be convenient, accessible or otherwise desirable to the car owner. Moreover, the lack of competition and consumer choice will inevitably lead to higher repair prices. Failure to perform necessary maintenance for any reason will result in unsafe and high-polluting vehicles populating the nation's highways.

Action Needed: The Motor Vehicle Owners Right to Repair Act prevents vehicle manufacturers and others from unfairly restricting access to the information and tools necessary to accurately diagnose, repair, re-program or install automotive replacement parts. The Act would require the Federal Trade Commission to promulgate and enforce regulations that ensure competition in the vehicle repair business. In addition, the bill would permit the FTC, car owners and independent repair facilities to take legal action to ensure all information and tools are available and affordable. The Right to Repair Act does not affect the dealer's right to perform any services, including warranty work and does not unconstitutionally take the manufacturer's intellectual property or require them to disclose trade secrets.

What You Can Do Today: So far this year the bill has not yet been introduced. When it is the association will support the bill and let you know how to write your congressmen to ask them to sign on as sponsors. For now the Automotive Aftermarket Industry Association is collecting examples of repair shops which have been denied access to tools and information necessary to perform repairs. Please take a moment to fill out the enclosed survey and fax or mail it to the Association.

Paperwork For New Hires

As an employer you must ensure that your employees have the proper documents to establish identity and to establish employment eligibility using Federal Form I-9. In addition you must have on file completed employee's withholding certificates for both federal (W-4) and state income tax (IT-2104). To perform this function, three forms must be executed upon hire of a new employee, and must be updated as necessary to keep them current.

Federal form I-9 is used record documents that establish both identity and employment eligibility such as

- U.S. Passport (expired or unexpired)
- Certificate of U.S. Citizenship
- Certificate of Naturalization
- Unexpired foreign passport with I-55 stamp or attached Form I-94 indicating current employment authorization
- Permanent resident Card or Alien Registration Receipt Card with photograph

In lieu of these, the employee must present two documents, the first of which establishes identity. Examples include

- Driver's license or ID card issued by a state or U.S. possession which bears a photograph or information such as name, date of birth, gender, height, eye color, and address.
- ID card issued by federal state or local government agencies meeting same requirements as directly above.

The second document establishes employment eligibility. Examples include:

Social security card
U.S. Citizen ID card

Should you have any question about filling out these forms please call the association.

NEW YORK STATE ASSOCIATION OF
SERVICE STATIONS AND REPAIR SHOPS
6 Walker Way
Albany, NY 12205

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New York Motor Fuel Marketing Practices Act Extended

Bill A4306 - S2106 has passed both houses of the legislature and enacted by the governor. The bill amends section 3 of chapter 691 of the laws of 2003 of the New York General Business Law. It extends the New York Motor Fuel Marketing Practices Act for five years. The law, better known as the "Below Cost Pricing" law was to end this year but has now been extended for an additional five years.

This would be great news if the bill had been corrected. In its current form below cost is defined as 95% of the rack price plus, freight, labor and rent. When the original bill was enacted, below cost selling was defined as 98% of the rack labor and rent. At Governor Pataki's request, the law was adjusted to the much looser definition of 95% of these values.

There have been about seventy complaints of below cost selling to the Consumer Protection Board and none have resulted in a violation. However, it is useful. A complaint will result in an investigation and at times will make some companies do the right thing.

As before if you believe a competitor is in violation of this law, contact the association and we will help you obtain and fill out the appropriate forms to file a complaint