

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

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Fiscal Mountain Climb Continues

What could happen if the nation makes an alarming descent by year's end is collectively in the hands of the president and Congress. The fiscal cliff that's been building in Washington is proving to be an intense cliffhanger scenario.

Last week Republicans dissed President Obama's plan for avoiding an economic disaster by the time 2012 expires. The president's plan calls for "\$1.6 trillion in new taxes, \$50 billion in fresh spending on the economy and an effective end to congressional control over the size of the national debt," according to *The Washington Post*.

While government leaders continue negotiations, here's what the rest of America can look forward to if no agreement is reached: "Unless Congress acts on the fiscal cliff, taxes will rise significantly in January for nearly 90% of Americans, and about \$65 billion will be sliced out of the Pentagon and other agency budgets, probably triggering a recession. Simply canceling the changes, however, risks undermining confidence in the nation's ability to manage its rising debt," write the *Post*.

Congress must deal with a wide variety of expiring provisions that directly impact small business. If it fails to address these issues, then effective January 1, 2013, the following new rates will go into effect, according to the National Federation of Independent Business:

Individual Income Tax

- The 10% bracket would disappear. The 15% bracket would become the lowest tax rate. And the 25%, 28%, 33% and 35% rate brackets would rise to 28%, 31%, 36% and 39.6%.
- The capital gains rate on assets held

longer than a year would increase to 20% from 15% for middle- and upper-income taxpayers and rise to 10% from zero for those with lower incomes.

- Dividends would be taxed as ordinary income rather than at the same rate as capital gains.
- The per-child tax credit would revert to \$500 from its current level of \$1,000 and would cease to be refundable.
- Expansions of the earned income tax credit, the dependent care credit and the adoption credit would expire.

Estate Tax

- The maximum rate on taxable estates would rise to 55% from 35%.
- The maximum estate size exempt from tax would fall to \$1 million from \$5 million.

Business Taxes

- Expensing limits under Section 179 will fall back to \$25,000 and real property will no longer be included.
- The holding period for built-in gains on appreciated S corporation assets will be reduced from 10 years to 5 years.
- The start-up deduction for businesses will be reduced from \$10,000 to \$5,000.
- Companies would no longer be able to claim a 50% bonus depreciation on qualified capital investments (Bonus depreciation of 100% of capital investments already expired at the end of 2011.)

Alternative Minimum Tax (AMT)

- An estimated 31 million additional taxpayers would be required to pay the AMT (only 4 million owed it in 2011).

Payroll Tax

- The employee share of the Social Security payroll tax would revert to 6.2% from 4.2%.

All eyes are on Washington. Stay tuned.

AAA: E15 May Damage Vehicles, Cause Consumer Confusion

New AAA research reveals a need to suspend E15 gasoline sales to protect motorists. A recent AAA survey reveals a strong likelihood of consumer confusion and the potential for voided warranties and vehicle damage as a result of the Environmental Protection Agency's (EPA) recent approval of E15 gasoline.

An overwhelming 95% of consumers surveyed have not heard of E15, a newly approved gasoline blend that contains up to 15 percent ethanol. With little consumer knowledge about E15 and less than five percent of cars on the road approved by automakers to use the fuel, AAA is urging regulators and the industry to stop the sale of E15 until motorists are better protected.

Only about 12 million out of the more than 240 million light-duty vehicles on the roads today are approved by manufacturers to use E15 gasoline, based on a survey conducted by AAA of auto manufacturers. AAA automotive engineering experts also have reviewed the available research and believe that sustained use of E15 in both newer and older vehicles could result in significant problems such as accelerated engine wear and failure, fuel-system damage and false "check engine" lights for any vehicle not approved by its manufacturer to use E15.

"It is clear that millions of Americans are unfamiliar with E15, which means there is a strong possibility that many motorists may improperly fill up using this gasoline and damage their vehicle," said AAA President & CEO Robert Darbelnet. "Bringing E15 to the market without adequate safeguards does

not responsibly meet the needs of consumers."

Unsuspecting consumers using E15 could end up with engine problems that might not be covered by their vehicles' warranties. Five manufacturers (BMW, Chrysler, Nissan, Toyota and Volkswagen) are on record saying their warranties will not cover fuel-related claims caused by the use of E15. Seven additional automakers (Ford, Honda, Hyundai, Kia, Mazda, Mercedes-Benz and Volvo) have stated that the use of E15 does not comply with the fuel requirements specified in their owner's manuals and may void warranty coverage.

"The sale and use of E15 should be suspended until additional gas pump labeling and consumer education efforts are implemented to mitigate problems for motorists and their vehicles," continued Darbelnet. "Consumers should carefully read pump labels and know their auto manufacturer's recommendations to help prevent any problems from E15."

AAA urges fuel producers and regulators to do a better job of educating consumers about potential dangers before selling E15 gasoline. This outreach should include a consumer education campaign and more effective pump labels, among other potential safeguards to protect consumers and their vehicles. AAA also recommends additional testing to conclusively determine the impact of E15 use on vehicle engines and fuel system components. At least 10 gas stations currently sell E15 and that number is expected to grow, which means now is the time to suspend sales before more retailers begin offering the fuel.

EPA's regulations require retailers of E15 to post a label near the fuel selector informing consumers that the fuel is approved for only

2001 and newer vehicles, explained NACS Vice President of Government Relations John Eichberger. NACS believes that retailers who comply with all applicable laws and regulations should be afforded some protection against liability in the event someone circumvents the rules. In testimony before Congress, he noted that EPA is free to establish whatever requirements it deems necessary to prevent misfueling and retailers will comply with the final decision, but such compliance should satisfy their responsibilities to prevent misfueling. During deliberations regarding EPA's misfueling rule, NACS strongly advocated for a coordinated consumer education campaign led by the government and would still welcome the opportunity to participate in such a campaign.

The EPA in June officially approved the sale of E15 after receiving a waiver request from producers interested in expanding the use of corn-based ethanol. Despite objections by auto manufacturers, the EPA approved the use of E15 gasoline in flex-fuel vehicles and 2001 model year and newer cars, light-duty trucks and medium-duty passenger vehicles and SUVs. AAA urges consumers to follow the recommendations of manufacturers to truly protect themselves from voided warranties or potential damage.

AAA points out that it supports the development and use of alternative fuels. More than 95% of the gasoline sold in the United States contains up to 10% ethanol. Lower ethanol blends should remain available to consumers while the challenges with E15 are addressed.

Meanwhile, NACS told USA Today that its members are concerned about the effects that E15 could have on pumps and fuel lines.

"The EPA says its OK to sell it, but for most retailers, there is too much uncertainty related to consumer demand and liability protection, especially if it's later determined E15 is a defective product or there are problems," said NACS spokesman Jeff Lenard.

Scott Zaremba, who has been selling E15 blends at several of his eight Zarco 66 stations in Kansas since July, told USA Today that none of his customers have complained to him about E15, and that he's using the blend to fill up his model year 2001 Chevy truck.

"The same complaints came when 10% blend came in — the world was coming to an end," said Zaremba. "E15 burns well and has great performance, and four people tell me it gives them better gas mileage. I don't see any major issues with it — yet."

Congress Continues Dollar Bill Debate

A recent Government Accountability Office (GAO) report suggests that replacing the \$1 bill with a \$1 coin could save the U.S. government \$4.4 billion over 30 years.

Last week the U.S. House Financial Services Committee's Domestic Monetary Policy and Technology Subcommittee held a hearing, "The Future of Money: Dollars and Sense," to explore the dollar bill versus coin issue.

Lorelei St. James, director of the physical infrastructure team at GAO, recommended that Congress "proceed with replacing the \$1 note with the \$1 coin. We continue to believe that replacing the note with a coin is likely to provide a financial benefit to the government if the note is eliminated and negative public reaction is effectively managed through stakeholder outreach and public education. However, we realize that

replacing the \$1 note with the \$1 coin is controversial. We have previously reported on public opposition to using the \$1 coin and the challenges that private businesses such as vending machine owners would face if such a transition were undertaken. Several foreign countries have already transitioned from small note denominations to coins, for a number of reasons, including the greater durability of coins and inflationary pressures.”

Richard Peterson, acting director of the U.S. Mint, commented that the Mint has made significant progress on a research and development program that examines possible metallic alternatives for U.S. coins. The Mint plans to provide its findings to Congress later this month.

During the hearing, Rep. Lacy Clay (D-MO) commented that men don't like carrying a bunch of coins around in their pocket or in their suits, while Rep. Carolyn Maloney (D-NY) said the dollar coins are too hard to distinguish from quarters, reports The Associated Press.

"If the people don't want it and they don't want to use it," Maloney said, "why in the world are we even talking about changing it?"

Meanwhile, some economists say that exchanging the dollar bill with a copper coin would be beneficial. Earlier this year U.S. Sen. Tom Harkin (D-IA) and Rep. David Schweikert (R-AZ) authored legislation, the “Currency Optimization, Innovation and National Savings (COINS) Act” (H.R. 2977 and S. 2049), that seeks to boost dollar coin circulation via education and collection. The members of Congress both hail from copper-producing states.

Former members of Congress, Reps. Jim

Kolbe (R-AZ) and Tim Penny (D-MN), are spearheading the Dollar Coin Alliance, a coalition comprised of small businesses, mass transit agencies, budget watchdogs, trade associations and private companies that is working to educate the public and members of Congress on the benefits of the dollar coin.

EPA Anticipates Publishing Final Rule For Underground Storage Tanks in Fall 2013

The Environmental Protection Agency said it expects to publish a final rule on underground storage tanks in fall 2013. The agency told BNA Nov. 28 it has received “many thoughtful” public comments on its proposed rule and will continue to reach out to interested groups in developing its final proposal. EPA also said it will consider the public comments as it “tailored” a final compliance cost estimate.

EPA offered the proposed rule for public comment in November 2011. EPA most recently met with petroleum industry representatives Nov. 13, including the Petroleum Marketers Association of America, the Texas Food & Fuel Association, the Northeast Louisiana Oil and Gas Co., Volta Oil Co., Bjornson Oil Co., and Davis Oil Co., over the compliance costs and testing requirements of the proposed rule.

As proposed last year, the rule would require tank owners to conduct a series of both monthly and annual inspections and test underground storage tank components periodically. The proposal also would require backup containment systems for certain tanks and would require expanded tank owner and operator training.

The proposal would apply to underground storage tanks that contain petroleum or other hazardous chemicals, which are regulated under Subtitle I of the Resource Conservation and Recovery Act (40 C.F.R. pt. 280), but would not apply to tanks containing hazardous waste that are regulated under Subtitle C of RCRA.

The Petroleum Marketers Association of America (PMAA) has repeatedly called the proposed rule “seriously flawed” and has urged EPA to withdraw it. EPA recently conducted follow-up meetings with the airline and communications industries (204 DER A-13, 10/23/12).

Concerns Raised Over Costs

PMAA told EPA in October comments the proposed rule would cost 233,157 affected petroleum facilities nationwide \$6,100 annually to comply with the proposed rule (206 DER A-12, 10/25/12). EPA estimated compliance costs for businesses would be around \$900 annually in its proposed rule.

An attendee of the Nov. 13 petroleum industry meeting, who declined to be identified citing the sensitivity of discussions with EPA, said the agency committed a “serious procedural flaw” by not convening a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel during the development of the regulations.

Passed by Congress in 1996, SBREFA requires federal agencies to notify the Small Business Administration's Office of Advocacy when a regulation is expected to have a “significant impact” on a large number of small business entities. Officials from the Small Business Association, relevant federal agencies, and the Office of Management and Budget's Office of Information and Regulatory Affairs then convene a panel to hear from potentially

affected small business entities.

The petroleum marketing industry strongly objects to EPA's conclusion that the storage tank rule would not have a significant economic impact on small business entities.

EPA Disagrees with SBREFA Claim

EPA strongly disagreed with the claim that it would need to convene a SBREFA panel before promulgating the rule.

“EPA followed required procedures when drafting the proposed rule,” the agency told BNA. “We worked extensively with stakeholders to develop the proposal and completed all necessary analysis.”

The meeting attendee also told BNA the rule could lead to inadvertent releases by requiring testing of equipment that is not designed to be repeatedly removed, like drop tubes and sensors, or put under pressure, like interstitial spaces in pipes and sumps.

Mark Morgan, regulatory council for PMAA, told BNA Nov. 29 he was pleased the agency will not rush the final underground storage tank rule.

“The autumn 2013 deadline for publication in the Federal Register will give [EPA's Office of Underground Storage Tanks] additional time to seriously address PMAA's concern about compliance costs which we maintain were significantly underestimated by the agency,” he said. “PMAA would ultimately prefer that the rule be withdrawn, redrafted, and presented to small business stakeholders for review before a proposed rule is republished. The proposed rule as written, however, imposes compliance costs on small business marketers that we simply cannot accept.”

Airlines Applaud EPA Time Frame

Victoria Day, spokeswoman for Airlines for America, which represents the airline industry, also applauded EPA's time frame for issuing the final rule.

"A4A believes it is appropriate that EPA take the time needed to publish its final underground storage tank rule, taking into account the numerous industry comments they received," Day said in a Nov. 29 statement to BNA.

The Environmental, Health & Safety Communications Panel, a communications industry group that met recently with EPA, was unavailable for comment on the time frame for the final rule.

Phillip Morris To Hike Tobacco Prices

Philip Morris USA is raising its cigarette list price 6 cents on all its brands. The increase is slated to take effect Dec. 3, according to Wells Fargo Securities LLC's trade contacts.

Wells Fargo Securities has been expecting the per-pack uptick -- and even predicted Altria's PM USA would lead the way -- based on results of its recent Tobacco Talk industry trade surveys. The only difference is the increase is coming a week earlier than expected, according to Bonnie Herzog, managing director of beverage, tobacco and consumer research at Wells Fargo Securities.

Importantly, she pointed out, PM USA is offering Marlboro Leadership Price (MLP) option stores the opportunity to maintain their existing Marlboro retail selling prices through Dec. 15.

Wholesalers were also bracing for the price increase and began stocking up on cigarette

inventory in advance of an uptick, as CSNews Online previously reported.

"We expect [fourth quarter 2012] industry cigarette volume should be strong given inventory building by wholesalers in advance of this price increase," Herzog said. "We expect overall cigarette net price realization to accelerate in 2013 and we have further conviction industry top line will improve during Q4 and beyond driven by stronger volume trends, higher list prices and easing promotional spending."

In addition to raising cigarette prices, PM USA is increasing the price on Marlboro Snus by 5 cents a tin or flip-top box.

"Overall this price increase is positive and indicates the industry continues to have pricing power. Given that consumption will likely continue to decline in the mid-single digit range, pricing is necessary to drive top-line growth," Herzog said.

R.J. Reynolds Inc. and Lorillard Inc. are expected to follow suit with price increases of their own in the coming days, she added.

Tobacco Cos. Must Admit Deception on Products, Ads

Major tobacco companies have been ordered by a federal judge to admit they lied about the dangers of cigarettes -- and use their own money to pay for the public advertising campaign.

The ruling sets out what might be the harshest sanction to come out of a case that the Justice Department brought in 1999 accusing the tobacco companies of racketeering, according to Reuters.

U.S. District Judge Gladys Kessler wrote

that the new advertising campaign would be an appropriate counterweight to the companies' "past deception" dating to at least 1964. The advertisements are to be published in various media for as long as two years.

The tobacco companies could appeal the ruling. The details of the ads, including the costs and which media will be involved, are still being worked. Once determined, the details could lead to another prolonged fight, the news agency reported.

In her ruling, Kessler looked to finalize the wording of five different statements the companies will be required to use. For example, one statement begins: "A federal court has ruled that the defendant tobacco companies deliberately deceived the American public by falsely selling and advertising low tar and light cigarettes as less harmful than regular cigarettes."

Another statement includes the wording: "Smoking kills, on average, 1,200 Americans. Every day."

The largest cigarette companies in the United States spent \$8.05 billion in 2010 to advertise and promote their products, down from \$12.5 billion in 2006, according to a report issued in September by the Federal Trade Commission.

"We are reviewing the judge's ruling and considering next steps," Bryan Hatchell, a spokesman for Reynolds American Inc., told Reuters. Philip Morris USA, a unit of Altria Group Inc, is studying the decision, a spokesman said.

A spokesman for a third major defendant, Lorillard Inc., had no immediate comment.

Kessler's ruling considered whether the

advertising campaign, known as corrective statements, would violate the companies' rights, given that the companies never agreed with her 2006 decision that they violated racketeering law. However, she concluded the statements were allowed because the final wording is "purely factual" and not controversial.

In August 2006, Kessler found that cigarette makers needed to be punished for deceiving the public about the dangers of smoking, as CSNews Online previously reported. Her ruling came at the conclusion of a nine-month trial. The ruling also ordered tobacco companies to stop labeling cigarettes as "low tar," "light," "natural" or any other "deceptive brand descriptors which implicitly or explicitly convey to the smoker and the potential smoker that they are less hazardous to health than full-flavor cigarettes."

Gas Rationing Ends In New York City

Gas rationing in New York City ended at 6 a.m. on Saturday, Nov. 24, reported the Wall Street Journal. More than 85 percent of approximately 800 gas stations within the city's five boroughs are back in service after closing due to power outages and fuel shortages caused by Superstorm Sandy.

Mayor Michael Bloomberg instituted the rationing system, which allowed drivers to fill up on odd-numbered dates if their license plate ended in an odd number, on Nov. 9. Last week, he extended the rationing in order to keep lines at gas stations down as people traveled over the Thanksgiving weekend.

"The odd-even license plate system not only significantly reduced extreme lines, but also eased anxiety and disruptions for drivers at

gas stations across the five boroughs," Bloomberg said in a statement.

Only 25 percent of gas stations within city limits were operating when the rationing system went into effect, according to the report.

Fuel restrictions were also placed on Long Island drivers in Nassau and Suffolk counties at the same time, but officials there had already ended rationing.

Tin Foil Bandits

You might not think stolen or expired credit cards and tinfoil could amount to much of a scam, but you'd be wrong. Tinfoil thievery — where the criminals use the foil to block satellite dish reception — is back in Michigan and Illinois, Oil Express reports.

The Michigan Petroleum Association is warning retailers of the scam, which involves one person uses a bad credit card to start fueling and distracts employees, while another climbs onto the station's rooftop to wrap the satellite dish in tinfoil. By blocking the credit-card readers, the transactions are stalled and the thieves can get away with large purchases both at the pump and inside the store, according to Oil Express.

The association says that retailers with easily accessible rooftops should be especially vigilant about checking their satellite dishes and systems.

Menu Labeling Rules Tying Pizzerias Up in Knots

How many different pizza combinations can you order at Domino's? The answer might shock you: 34 million. That's what

Domino's calculated as it began the process of providing calorie information to comply with the menu-labeling component of the Patient Protection and Affordable Care Act, the Minority Report reports.

The Office of Management and Budget (OMB) said the menu-labeling rule ranks third as the most costly regulation because each pizza retailer would shell out \$4,700 just to post the calorie information. The U.S. Food and Drug Administration (FDA) will be putting the rule into place soon.

"This regulation has nothing to do with advancing consumer health and everything to do with financially punishing small businesses, not something a country trying to get its economy moving again needs," the Minority Report wrote.

With many Domino's small, family-owned businesses, this rule will cause financial stress on many locations. The company already has an online Cal-o-meter to provide customers with a comprehensive look at calorie content in all 34 million pizza combinations.

Generator Bill

Senator David Carlucci, Democrat from Rockland County has introduced Bill S7865 which will require service station to install generator. This is in response to "Sandy" which disrupted power downstate to the extent motor were unable to purchase motor fuel. The Senator will, except for a tax credit place the expense on service station operators. In his memo in support he makes the following points. WE WILL OPPOSE THIS BILL.

Bill Number: S7865 Sponsor: Carlucci

An act to amend the general business law

and the tax law, in relation to alternate generated power capacity; and providing for the repeal of certain provisions upon expiration thereof

Purpose:

The purpose of this bill is to require certain service stations and fuel terminal and wholesalers to purchase and install an alternate generated power source to be used during power outages.

Summary Of Provisions:

Section 1. This section required fuel terminals, wholesalers and certain motor fuel retailers to purchase and install by September 1, 2014 an alternate generated power source which will enable them to operate their loading racks, fuel pumps, dispensing equipment, life safety systems, and payment acceptance equipment within 24 hours of a major disaster that causes the facility to lose electrical power. The bill requires all motor fuel terminal facilities and wholesalers to purchase and install an alternate generated power source. The bill also requires all newly constructed or substantially renovated motor fuel retail outlet to install this power source as well. Certain motor fuel retail outlets within one half mile of an interstate or a federal or state evacuation route will also be required to purchase and install an alternate generated power source.

These facilities will be required to have an electrical contractor install a transfer switch as well as maintain documentation attesting to the periodic testing and operational capacity of the system.

Section 2. Tax Credit: This section will provide a tax credit for the purchase and installation of an alternate generated power source.

Facilities that are required to purchase and install an alternate power source under section one of the bill will be

allowed a tax credit of up to 50% of the cost of installation and purchase. If a facility is not required to purchase and install the generator than the tax credit will be 50% of the cost to purchase and install the power source but cannot exceed \$2,500.

If an alternate generated power source for which the facility received a tax credit for is returned, sold, or removed from service within one year from the date that the power source was installed, then the amount of the tax credit will be re-captured.

Justification:

Hurricane Sandy left many New York counties devastated and without power for weeks. Due to this, many gas stations were left without power and were unable to meet the demands of thousands who were in need of gas for their vehicles and home generators. When fuel became available, many gas stations were still unable to provide it to consumers because their facilities were still without power. Consumers were forced to wait for hours in mile long lines in order to get gas from the few stations that were able to get their power restored.

This legislation will ensure that this does not occur again. This legislation mirrors Florida law and proposed legislation in California. Florida and Louisiana are the only states thus far that require certain service stations and terminals and wholesalers to install an alternate power source. This requirement allows for these stations to remain operable after a major disaster such as Hurricane Sandy. Requiring gas stations to have this alternate power source makes sure that residents have access to gasoline that will enable them to be able to leave the impacted area prior to or after the storm hits as well as to be able to have motor fuel necessary to power their own home generators. Including

a tax credit, such as the one proposed in California, will provide financial relief to those facilities that are required to continue to operate when there are large power outages due to a major disaster. This will make sure the New York residents will continue to have access to vital fuel to run their vehicles and own generators which become crucial during the colder months.

General Counsel Corner

When Are NSF's Not Sufficient Reason for Termination under the PMPA?

By Peter H. Gunst

Joseph v. Sasafraesent, LLC, 2012 WL 3038541 (7th Cir. 2012), concerns a distributor's attempt to terminate a lessee dealer after he repeatedly bounced EFTs for non-sufficient funds ("NSF").

The case is significant because it attempts to strike a balance between the franchisor's right under the PMPA to terminate for the franchisee's failure to pay in a timely manner for product, and the franchisee's right to a preliminary injunction to forestall termination under the PMPA's liberal standard.

The relationship between franchisor and franchisee had been marred by repeated NSF incidents, some of which the dealer took responsibility for, while blaming the distributor's collection practices for others. The three July 2010 NSFs that triggered the distributor's notice of termination followed the dealer's decision to change banks.

The first July NSF resulted from the distributor debiting the dealer's old bank account, and the dealer conceded his responsibility because he had not provided the distributor with adequate notice of his

change of accounts. The second July NSF was caused by the distributor, which continued to debit the dealer's old account even after receiving notice of the account change. The third July NSF, according to the dealer, was attributable to "mutual mistake." It supposedly resulted both from the dealer's failure to move money into the new account, and from the distributor's failure to deposit credit card receipts into the correct account.

When the distributor sent the dealer a notice of termination for untimely payment for product, the dealer sought a preliminary injunction in federal court. The obstacle that he had to overcome was the PMPA's express incorporation of failure to make timely payment as a valid ground for termination or nonrenewal. When the federal district court ruled against the dealer, he appealed to the Seventh Circuit Court of Appeals.

The Seventh Circuit joined the majority of other circuits that have held that the occurrence of one of the specific events listed in 15 U.S.C. § 2802(c) – such as a failure to make timely payment – justifies, a matter of law, a franchisor's decision to terminate the franchise. But that was not the end of the court's inquiry.

The Court of Appeals reversed the district's denial of an injunction and sent the case back to the district court for further analysis because the district court had failed to consider adequately the definition of what constitutes a dealer's "failure," which is contained in §2801(13) of the PMPA.

The statute excludes from the definition of "failure" – including a failure to make payment – any failure which is "only technical or unimportant" or is due to a "cause beyond the reasonable control of the franchisee."

The district court was directed to evaluate whether the July incidents that were attributable to the dealer were significant in view of the continuing relationship between the parties, and the extent to which the NSF's were attributable to the distributor's own mistake, and therefore not under the reasonable control of the dealer.

All of this seems to be a matter of legal technicalities, and so it is. The important point, however, is that even a ground for termination expressly recognized in the PMPA may not necessarily be fatal to a dealer's position, if he is given some leeway to explain mitigating circumstances.

Enroll Your Business With Energy Plus!

As a resident of New York, you have the choice to decide who lights up your business. To help members with this decision, NYSASSRS has partnered with Energy Plus®, one of the fastest growing energy suppliers, to offer members a custom electricity and natural gas program. You can enroll with Energy Plus to receive an Activation Bonus just for signing up and annual Cash Back on your energy supply charges each year!

When you enroll your business with Energy Plus, you will be eligible to receive a \$50 Activation Bonus AND an automatic 3% Cash Back rebate on your annual electricity supply charges. You can also enroll your home for a \$25 Activation Bonus and earn annual Cash Back rebates of 2%. Earn even more Cash Back when you enroll your natural gas account. Business accounts receive 3% Cash Back and home accounts receive 2% Cash Back with a \$25 Activation Bonus.

Switching is easy as there are no sign-up

fees, cancellation fees, or long-term commitments, and even staff members can save. There are no changes to your service - your utility company will continue to deliver your electricity and natural gas, mail your bill, read your meter and handle any power outages/service issues. To be eligible, you just need an address within the Energy Plus service area, which covers all of New York State, except areas covered by the Long Island Power Authority (LIPA), due to limited eligibility for choice programs in the LIPA region.

Call Energy Plus at 855-388-5274 and mention Offer Code "SER-0059."

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. Please call 518-452-4367.

Attention Inspection Stations

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other than the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This is a violation that almost always results in revocation.

\$afety Group 536

With a Financial history like this you have lots of reasons to smile.



DIVIDEND HISTORY

| | |
|-------|-----------|
| 35% | 2010-2011 |
| 35% | 2009-2010 |
| 35% | 2008-2009 |
| 35% | 2007-2008 |
| 30% | 2006-2007 |
| 30% | 2005-2006 |
| 25% | 2004-2005 |
| 22.5% | 2003-2004 |
| 17.5% | 2002-2003 |
| 10% | 2001-2002 |
| 15% | 2000-2001 |
| 30% | 1999-2000 |
| 40% | 1998-1999 |

DISCOUNT HISTORY

| | |
|-----|------|
| 25% | 2012 |
| 25% | 2011 |
| 20% | 2010 |
| 20% | 2009 |
| 20% | 2008 |
| 25% | 2007 |
| 25% | 2006 |
| 25% | 2005 |
| 20% | 2004 |
| 20% | 2003 |
| 20% | 2002 |
| 20% | 2001 |
| 30% | 2000 |

Current Group Management took over for the 04-05 policy year
2008 20 % Discount due to 18% rate decrease

Lawley
INSURANCE



New York State Insurance Fund

Workers' Compensation & Disability Benefits Specialist since 1914

NEVER BUY TERMINAL EQUIPMENT AGAIN!

FOUR CHOICES FOR FREE



We want you to have the **BEST EQUIPMENT POSSIBLE**, and just like a cell phone dealer offering free cell phones or a satellite TV company offering free dishes, we don't think you should have to pay for it.

GRANY has recently joined Global Payments – EXS to afford fellow members significantly reduced credit card processing rates as well as free equipment. **Members should expect to receive a savings of 10% - 40% in monthly residual credit card processing fees.**

It's difficult to adhere to all of the ever changing requirements needed to receive the lowest rates. Most merchants are penalized with incidental fees, non-qualified fees and surcharges. Global Payments – EXS will take the time to educate you and serve as your advocate as it relates to receiving the lowest processing rates available.

GRANY members are encouraged to receive their complimentary and confidential line-by-line savings analysis from Global Payments – EXS. **Simply fax a recent MC/VISA merchant statement to 518 452-1955.**

FOUR CHOICES FOR FREE – THE CHOICE IS YOURS!

Global Payments – EXS guarantees that **YOU WILL NOT PAY MORE IN PROCESSING FEES** when taking advantage of our Free Terminal Placement program

**For complete details, please call
John Casazza 518-452-4367**

Program can support these card types

VISA
MasterCard
Discover
American Express

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:

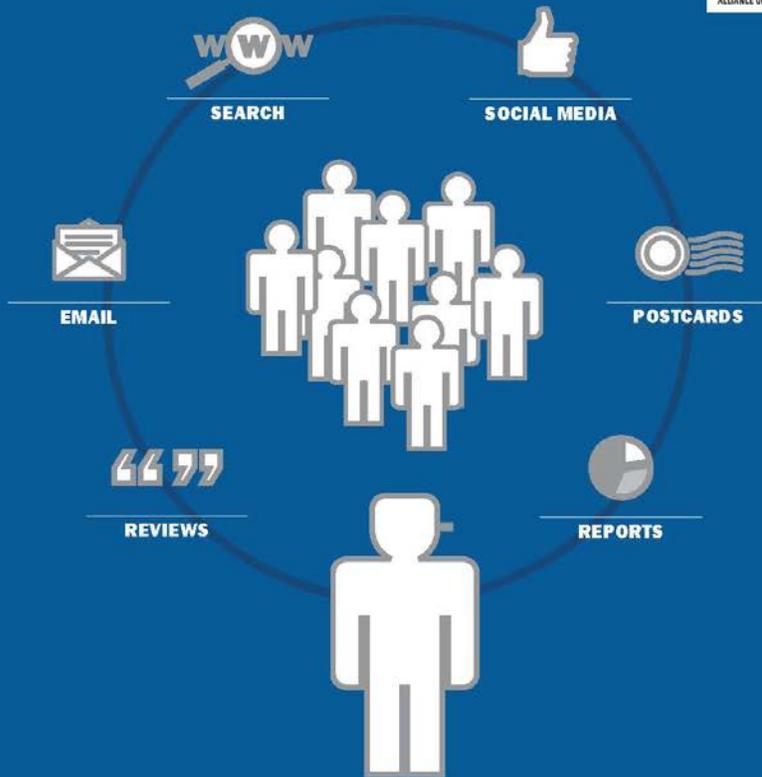
- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any 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**



SOCIALCRM: SHOP MARKETING MADE SIMPLE

**AASP Members Receive
\$15/month off SocialCRM**

Includes new SocialCRM sales and upgrades of existing eCRM customers to SocialCRM. It does not include a discount on new sales of the eCRM product level.



Please Contact Your AASP Sales Representative
to Schedule a Mitchell 1 Presentation



SEARCH

GO WHERE NEW CUSTOMERS CAN FIND YOU

Our Customer Review System allows your customers to create reviews of your service, which are automatically verified as authentic customer reviews. These reviews, with keywords added to optimize performance, create Search Engine-friendly links – driving your search visibility upwards, where new customers can find you.



EMAIL

STAY CONNECTED TO CURRENT CUSTOMERS

Turn first-time customers into loyal, profitable customers automatically. Mitchell 1's Social CRM integrates seamlessly with your shop management system, calculating mileage history and combining that with specific maintenance schedules to determine next recommended services. Includes:

- Email matching with your customer database
- Ongoing automatic email service reminders
- Target market promotions
- Customizable large-format postcards, artwork, and logos



POSTCARDS



SOCIAL MEDIA

IT'S TIME TO GET SOCIAL MEDIA WORKING FOR YOU

Your dedicated support agents will set up your Facebook page for maximum word-of-mouth marketing. Compelling content, AutoNetTV™ videos and Customer Reviews will be automatically pushed to your Facebook page on a regular basis to keep your shop visible and your customers engaged. Facebook links will be included in the Thank-You emails and on your customer's personalized vehicle maintenance website, OwnerAutoSite.com.



REVIEWS

GIVE YOUR SHOP A REPUTATION BOOST

Your customer reviews are posted to the web, complete with Overall Satisfaction Star Ratings, Review Comments, and Recommend scores. The Customer Review System can also verify which reviews are from actual customers, which studies prove are typically higher than unverified reviews. With ReScore, you can ask for a follow up review once you've had the opportunity to resolve a customer concern.

- Automated low score alerts
- Review customer verification
- Links to your shop's website
- Respond to customer reviews



REPORTS

SAY HELLO TO MARKETING CRUISE CONTROL

Your Mitchell 1 Support Agent will work with you to set up your SocialCRM service and monitor its performance with our extensive Summary Reports. Your support agent will:

- Set up Facebook page and create automatic feeds of video and review content
- Help you choose automatic Email and Postcard campaigns
- Review your Summary Reports and recommend tuning your program for maximum return on your investment
- Help you create coupons and send targeted email blast campaigns



Q1 2012

| | Promo Price | AASP Price |
|--------------------------|-----------------------------|------------|
| <u>Manager</u> | | |
| Manager, Single User | \$0 S&I \$109/mo | \$99/mo |
| Manager, Multi User | \$0 S&I \$135/mo | \$125/mo |
| | | |
| ManagerPlus, Single User | \$0 S&I \$139/mo | \$129/mo |
| ManagerPlus, Multi User | \$0 S&I \$175/mo | \$165/mo |

TEAMWORKS

| | | |
|--|-----------------------------|----------|
| Manager, Single User w/OnDemand5.com | \$0 S&I \$209/mo | \$199/mo |
| Manager, Multi User w/OnDemand5.com | \$0 S&I \$259/mo | \$249/mo |
| | | |
| ManagerPlus, Single User w/ OnDemand5.com: | \$0 S&I \$239/mo | \$229/mo |
| ManagerPlus, Multi User w/OnDemand5.com: | \$0 S&I \$295/mo | \$285/mo |

Other Products available as bundles or individually

| | | |
|--------------------------------------|------------------------------------|----------|
| OnDemand5.com | \$0 S&I \$159/mo | \$149/mo |
| Medium-Truck.net | \$0 S&I \$129/mo | \$119/mo |
| Tractor-Trailer.net | \$0 S&I \$235/mo | \$225/mo |
| | | |
| SocialCRM | \$0 S&I \$199/mo | |
| SocialCRM - AASP Members Only | \$15.00/mo Off Promo Price | |
| | 1st Quarter 2012 | |

Please contact your local Mitchell1 Representative for more info.

To find your local representative, or submit a lead, go to: www.m1leads.com/aasp

- **Prices should not be shared as an example only. Prices may vary depending on the product needs of the Repair Shop Customer.**
- All products come with a 30 day cancellation policy from Mitchell1.
- All products require 12-month agreement. After initial 12 months, each renewal period is 12 months with 30-day guarantee period commencing on renewal date.
- All products offered as software only; customer must provide hardware.
- All products include on-site training and installation.
- Network set up, installation and installation of all multi-user products is the responsibility of customer. Obtaining the services of a Network Professional to set up the network and install all multi-user products is highly recommended.
- Promotional pricing ends March 31, 2012.



Want to get more from your energy provider?



Switch to Energy Plus® and earn Cash Back just for using energy!

\$50 Activation Bonus

after two months of active electric service for your business account*

Earn 3% Cash Back

every twelve months on the supply portion of your business' electric bill*

Sign up

both your business and home today!

No Hidden Fees

We do not charge enrollment fees, monthly service fees, switching fees or cancellation fees.

FREQUENTLY ASKED QUESTIONS

CAN I SIGN UP FOR NATURAL GAS SERVICE?

Yes, Energy Plus offers natural gas service in New York so you can earn even more annual Cash Back and an additional \$25 bonus after 2 months of active service for each gas account you sign up.

WILL MY SERVICE BE INTERRUPTED?

That is the best part! Nothing about the way your service is delivered will change. Your local utility will continue to deliver your energy, read your meter, handle service emergencies, and send your monthly statement.

HOW DOES THE CASH BACK PROGRAM WORK?

After 2 months of active electric service you will earn a \$50 Activation Bonus for each business account enrolled and a \$25 Activation Bonus for each home account enrolled. Plus, after 12 months of active service you will automatically receive your ongoing Cash Back rebate. The ongoing Cash Back earned will be 3% of the supply portion of your business electric or natural gas bill(s) or 2% of the supply portion of your home electric or natural gas bill(s).*



Give Us A Try Today!

EnergyPlusRewards.com/NYSASSRS6131
1.877.770.3372 | Offer Code SER-6131

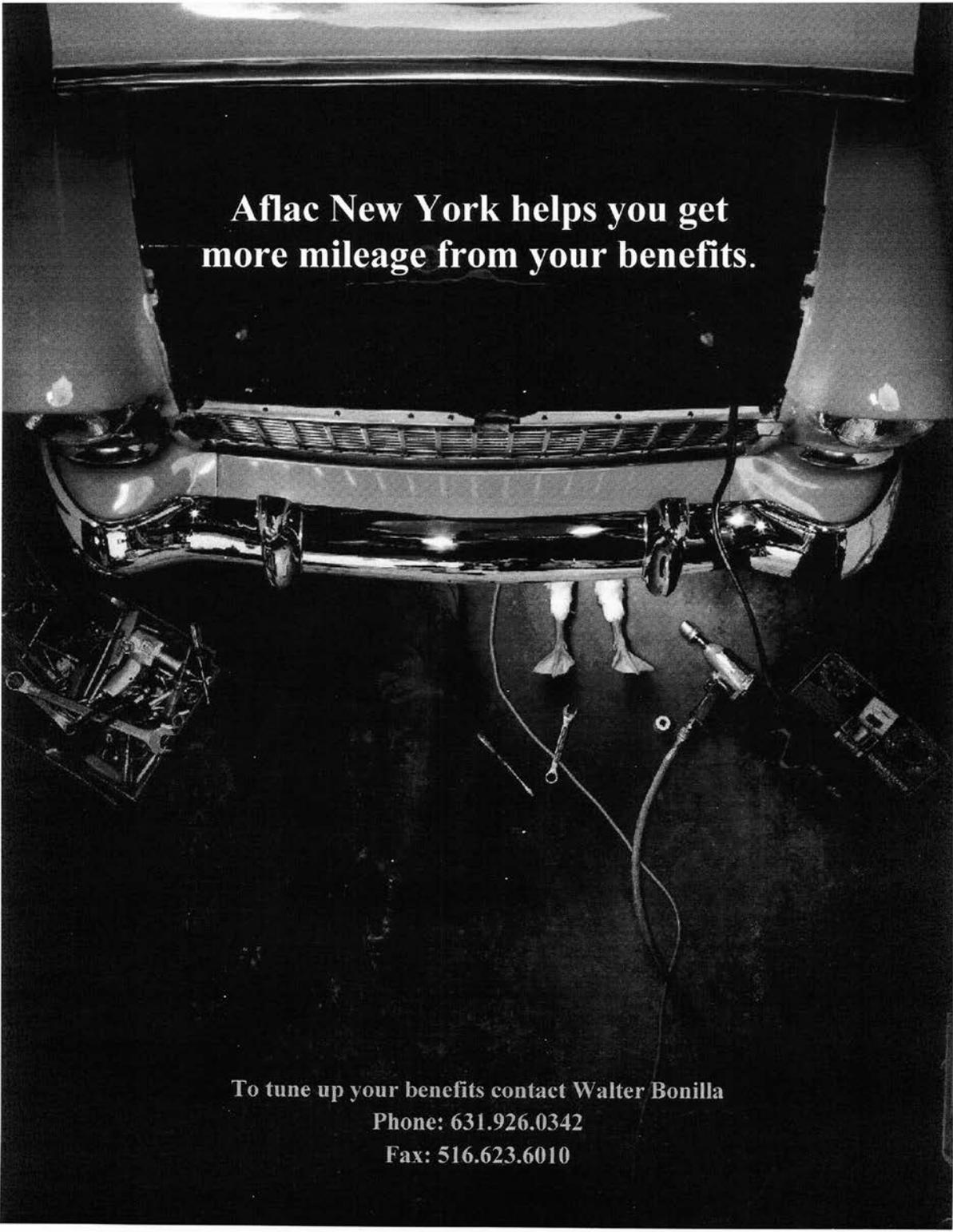


***Important Offer Details:** Electricity service offer valid for NY residents excluding areas serviced by the Long Island Power Authority (LIPA). Natural gas offer valid for NY residents with heating accounts in areas serviced by Consolidated Edison, National Grid (Keyspan NY), National Grid (Niagara Mohawk), New York State Electric and Gas (NYSEG), Orange & Rockland and National Fuel Gas. Electricity service is provided through Energy Plus Holdings LLC and natural gas service is through its affiliate Energy Plus Natural Gas LLC. Limited-time offer only available to first-time Energy Plus residential and small commercial customers. Previous and existing Energy Plus customers are not eligible. Offer is non-transferable, cannot be combined with other Energy Plus offers or Energy Plus Natural Gas offers, is subject to change or cancellation and is not available for all rate classes, customer types or in all areas. Additional eligibility requirements, terms and conditions may apply. Please see our Terms of Service for full details which can be found online via the web address listed above and in your Welcome Email/Letter. Energy Plus has been deemed an eligible supplier by the NY PSC.

Rewards Information: Active accounts are defined as those (i) that are billing more than \$0 and (ii) for which we have not received a request to discontinue service. Please note, if you enroll both electric and gas accounts, it is possible your services will start on different dates, so your bonuses may be awarded on different dates. Your Cash Back rebate will be mailed automatically after the close of your twelfth billing cycle which means you must have an active Energy Plus account for 12 billing cycles to receive the Cash Back rebate. Account eligibility for a natural gas Activation Bonus requires a minimum of 500 annual therms or ccfs, based on historic usage as estimated by your utility at the time of enrollment.

Green Option Information: If you choose to add the Green Option, you will be charged approximately \$0.01 additional per kWh over Energy Plus' variable electric supply rate and your monthly electricity usage will be automatically offset by an equivalent amount of wind power via Renewable Energy Certificates (RECs).

Energy Plus and Energy Plus Natural Gas are solely responsible for the content of this marketing material and for the selling to, solicitation of, and enrollment of customers for energy supply services. NYSASSRS provides us access to its members as a benefit for members.



**Aflac New York helps you get
more mileage from your benefits.**

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



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

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