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# NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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## API Issues New Fill Port Standards

The association has received numerous questions about fill port color coding standards for fuel containing ethanol. We posed the question to New York State Department of Agriculture and Markets, and this was the response. Color coding is standardized by the American Petroleum Institute (API). What follows is their standards.

Premium unleaded gasoline fill ports must be marked in red with a white cross. The same grade which contains ethanol must have a white ring around the marking.

Mid-grade unleaded gasoline fill ports must be marked in blue with a white cross. The same grade which contains ethanol must have a white ring around the marking.

Regular unleaded gasoline fill ports must be marked in white with a black cross. The same grade which contains ethanol must have a black ring around the marking.

E85 gasoline fill ports must be marked with a baseball diamond shape in bronze with the lettering E85.

The point of vapor recovery must be marked with an orange circle. If that vapor recovery is done at the fill port then that fill port must be marked with an outer orange ring

## Article 20, Agriculture and Markets Law, Food Service Licenses

Convenience stores that sell food that needs to be heated, excluding coffee must apply for a food processing establishment license. It 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. Please pay special to question eight and call the association for more information.

The New York State Association Of Service Stations & Repair Shops Inc.'s application to provide a food safety education program has been approved by the NYS Department of Agriculture and Markets. For further information on having an individual from within the store has been recognized as having completed an approved food safety education program call 518-452-4367

## Right To Repair Act Becoming More Crucial To Aftermarket, Shopowners

The Right to Repair Act is becoming more crucial each day. As new more technically challenging vehicles roll off the assembly line less information is available to the independent repair industry. Tools are also at a premium. Try to purchase the same scanner used by automobile franchise dealers. You cannot buy some of them at any price.

The effort to pass federal legislation is on going. However, the reality is that passing bill in congress is extremely difficult if not impossible. The current bill sponsored by Congressman Towns has forty co-sponsors and has a long way to go before it can be considered a viable solution.

The association recognized that a federal solution was almost impossible. Therefore, we had a bill introduced in the New York State legislature in 2005. We did not push the bill until we were sure we had the industry support sufficient to pass the bill.

Assemblymen Darryl Towns, the son of Congressman Towns, introduced the bill A.5817 in the State Legislature for the 2007/08 session. Senator Marcellino, S.7007, has introduced the Senate counterpart.

The Association staff has worked with other groups to promote the state bill. Our lobby efforts resulted in co-sponsorship of the bill by, Senators DeFrancico, Nozzolio, Trunz, Volker, Roback and Fuschillo. The Assembly co-sponsors are Assembly member, Benedetto, Colton, Errigo, Espaillat, Greene, Jaffee, Millman, Alfano, Magnarelli, Spano, Aubertine, Cusick, Alessi, Abbate, Fields, Markee, Gianaris, Peralta, and Rivera.

This is a good start toward moving the legislation. We need the industry to be involved. By now you should recognize that the automobile franchisees are taking away

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some of your business and it not because you do not want the business it because you either don't have the tools or the information to do the repair. This will force the automobile manufactures to provide you with the information and tools you need to repair today vehicles. How can you help? · Contact your State Legislature and ask that they con-sponsor A.5817 - S.7001.

- Get your fellow repair shop owner to do the same
- Inform your customers what is happening
- Provide examples of cases where you could not repair a vehicle and the customer need to go back to the dealership.
- If you now of a case where a custom or friend had to drive a long distance to have this/her vehicle checked because the local repair shops did not have the tools or information to determine what was wrong with the vehicle.
- Watch your communication from the Association and be prepared to help.
- Remember the business you save could be yours.

### **With Governor Spitzer Gone, Now What?**

With the exit of Governor Spitzer, we who are involved in the everyday activities of the State Legislature, are asking the same question, what now? Well, after being involved with the Association since 1963, and having been in contact the State Legislature since 1973, I feel things can only get better. The Spitzer Administration was merciless in its regulation of small business throughout the State.

The Association tried every avenue available to protect the industry against the draconian polices of the Spitzer Administration. Enforcement was dished out with a sledgehammer. Our attorneys could only put up a defense and watch while excessive fines were dished out to our members. In the first year of the Spitzer Administration, penalties were higher than we have ever seen in the past. Enforcement, settlement offices and administrative hearing judges showed no mercy. The administrative law system became a money making weapon for the Governor. Defendants were told to pay a \$5,000 to \$10,000 to settle the charges or face a \$37,000 a day fine for every day the violation existed. Previously, fines in the \$1000 to \$2000 were the norm. Faced with mounting legal expenses, businesses had no choice but to accept the settlement offer.

A dealer who received a violation from DEC and went to a settlement hearing felt like they were facing a court marshal proceeding with a firing squad waiting outside the court room door.

The Governor's goal was to raise \$2 billion through revenue actions, changes to the tax code, and new and higher fees while maintaining he was not raising taxes. Attempts to change the policies of the agencies were unsuccessful, and as time went on the penalties only got worse.

It was not only the service station industry that was at risk. In Spitzer's budget, fines for insurance agents and brokers went up twenty fold. For example, an agent that

forgot to renew a license, a \$10,000 fine was assessed. The increased fines were expected to raise \$304 million to help close the budget gap.

Have you had a problem with the State Liquor Authority? If you did you know what we mean. They are insensitive to the needs and problem of any business that sells alcoholic beverages in the state. What you must never do is get an enforcement agent angry. Not only can they go after the license of the business they are inspecting, but they can go after licenses of other businesses you may own, and see to it that you can't register any new business to sell beer. There was no one to complain too. Spitzer's enforcement polices were carried over from his term as Attorney General. "Guilty, bring in the next guilty party."

Do you remember the fifteen stations that were fined for price gouging when the price of motor fuel spiked in the wake of Hurricane Katrina? Attorney General Spitzer knew it was major oil driving up the costs, but retailers were easy targets. Station owners were told pay two to five thousand dollars by a certain date or face fines of thirty to forty thousand dollars. Small business could not afford the outrages fines and legal fees they were threatened with, so they settled. What was also interesting was that the stations selected to be prosecuted were in fifteen strategic areas of the state where the press coverage blanked the state.

We looked at the next three years of Mr. Spitzer's Administration in horror. While it is not for us to judge his indiscretions, we are not unhappy that he is gone.

What will the future bring under Governor Paterson? We just feel it could not be any worse than it would have been. We will be watching and waiting to see what time will bring.

### **NYS 2008-2009 Revenue Actions**

Provisions listed below are expected to generate \$56 million annually starting in 2008-09.

**Classify Credit Card Companies Doing Significant Business in New York as Taxpayers Under the Bank Tax.** This Budget would subject out-of-state credit card companies to New York taxation on the revenue they collect from New York merchants and consumers ("economic nexus"). This measure will generate \$95 million in 2008-09 and \$75 million when fully effective.

**Brownfields Tax Credit Reform.** This Budget would refocus State environmental clean-up efforts by expanding potential remediation credits and providing meaningful caps to redevelopment credits available under the Brownfields Program. This measure is revenue neutral during the five-year financial plan period, but will produce significant savings in the years following.

**Empire Zone Reform.** The Empire State Development Corporation will administratively decertify existing Empire Zone businesses that failed to meet certain performance targets, and enforce more stringent qualification standards for new Empire Zone businesses. These changes are expected to generate \$50 million in savings annually starting in 2008-09.

**Merge Fuel Taxes into One Petroleum Business Tax.**

This Budget recommends combining the petroleum business tax, the motor fuel tax and the State sales tax on motor fuel and diesel motor fuel into one petroleum business tax. This will offer greater transparency and simplify tax forms, making the tax easier to administer. This proposal would increase revenues by \$13.2 million in 2008-09 and \$55.9 million when fully effective.

**Capital Base Rate Reduction and Cap Elimination.** This Budget would reduce the corporation franchise tax capital base rate, eliminate the tax liability cap on this base for non-manufacturers, and conform the definition of "manufacturer" under the capital base to the definition under the entire net income base.

The tax rate would be reduced from 0.178 percent to 0.15 percent. The conforming amendments would specifically exclude electricity generation from the definition of manufacturing.

This bill would provide further tax relief to corporations with capital base liability below \$1 million doing business in New York State and increase the liability of those who previously benefited from the \$1 million cap. This measure will generate \$98 million in 2008-09 and \$70 million when fully effective. Small businesses that qualify for the reduced rates will receive tax relief totaling \$42 million annually.

**Restructure Fees and Minimum Taxes Imposed on Limited Liability Companies (LLCs) and Corporations.** This Budget proposes to restructure LLC fees and corporate minimum taxes to impose a similar fee on all partnerships and S corporations. Under the new structure, LLC fees would be based on a measure of New York activity (income) rather than the total number of members in a LLC. This measure will generate \$75 million annually starting in 2008-09.

**Reclassify Certain Beverages.** The tax treatment of certain flavored malt beverage products would be changed to better reflect alcohol content. These products will be taxed at the low liquor rate 1' rather than the beer rate. This measure will generate \$15 million in 2008-09 and \$18 million when fully effective.

**Redefine Little Cigars.** Little cigars, which are indistinguishable from cigarettes, would be classified as cigarettes for tax and stamping purposes by both the State and New York City, and made subject X- to the requirements of the Master Settlement Agreement. This measure will generate \$3.6 million in 2008-09 and \$4.8 million when fully effective.

**Study Tax Policy Toward Non-residents.** The Department of Taxation and Finance would be directed to conduct a study of current taxation policies on non-residents with a limited work presence in New York. This will be done administratively.

**Adjusting Fee Schedules.** The Executive Budget recommends increasing certain fees and fines to offset the costs of administering of the programs. Included will be:

- food safety penalties;
- increasing various insurance related penalties; and
- increasing the motor vehicle law enforcement and highway safety fee.

- These measures will generate \$305 million in 2008-09.  
**Improving Tax Compliance.** The 2008-09 Executive Budget advances several new initiatives that the Department of Taxation and Finance will use to improve taxpayer compliance and reduce fraudulent activities. These measures include:

**Vendor Registration Program.** This Budget would institute a registration program that would be applicable to new registrations and re-registrations of vendors. This would make it easier for the Department to update taxpayer information, remove obsolete registrations and collect past-due taxes from vendors. The registration fee will be set at \$50.

**Vendor Classification.** This Budget would establish an evidentiary presumption that certain sellers using New York residents to solicit sales in the State are vendors required to collect sales and use tax.

**Voluntary Disclosure and Compliance Program.** Delinquent taxpayers will avoid criminal from prosecution and civil penalties if they voluntarily disclose their past delinquencies, pay past-due debt, and enter into a tax compliance agreement with the Department. Increased Enforcement Resources. Taxpayer compliance will be improved through a proposal to increase the Department's fraud and investigative enforcement staff. This effort will be broadcast through a statewide media campaign.

**Improved Ability to Fight Fraud.** The Executive Budget recommends a shortened tax administration process, requires electronic filing and increases and expands criminal penalties.

**Increase Access to Data.** As part of this Budget, financial institutions, sales tax vendors and other State Agencies be required to share certain tax information with the Department.

We will have to wait and see if Governor Paterson will make any changes to these initiatives.

#### **BILL NUMBER: A48, Assemblymen Lafayette**

The subject bill amends the vehicle and traffic law, in relation to repair work guarantees and the time period in which complaints against motor vehicle repair shops may be made. It establishes a warranty on the labor and parts supplied by automobile repair shops and a time period in which complaints against such repair shops can be made. The bill extends the warranty to labor and parts, which would be warranted for three months, three thousand miles or to thirty days after the discovery of a faulty repair which in the judgment of the Department of Motor Vehicles, (DMV), could not have reasonably been discovered in 90 days. However, in no event shall the DMV accept such complaint more than six years from the date of such repair. The bill requires the Commissioner of Motor Vehicles to accept complaints.

Current law provides that the Department of Motor Vehicle may accept a complaint on a repair for ninety days or three thousand miles. Extending the period to thirty days and up to years after a problem has surfaced is unreasonable. There are many repairs on a vehicle that are subject to wear from

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driver abuse or vehicle conditions. For example brakes may last for ten thousand or one hundred thousand miles depending on the driver. This holds true for other mechanical parts such a clutches and power steering.

Despite the Association's belief that the current law serves the public interest and therefore this bill should be defeated, the bill was reported out of committee.

**Bill A.1554 – S1756, Sponsor Hoyt – Senator Rath**

The subject bill amends the New York State Vehicle and Traffic Law, in relation to providing for mandatory drivers license suspensions for six months for the second offense and one year for a third or subsequent offense, for convection of leaving service stations without paying for the motor fuel. The bill adds a new provision to the law.

New York service stations are facing a major problem due to drive-off's." This is when a motorist pumps motor fuel in their vehicle and drives away without paying.

As motor fuel prices continue to escalate the number these incidents are increasing at alarming as prices rise. These crimes are extremely costly to the retailer, who must absorb the loss, and the consumer who must pay higher prices as a result. It is estimated that the cost to the service stations is the profit it will make on three hundred gallons of motor fuel. With the average margin for a sale of a gallon of gasoline at \$30.00 drive off's will result in the station needing to sell three hundred gallon to make the money lost to the theft.

Retailers have invested large amounts of money in an attempt to curtail their loss by way of sophisticated gasoline pumps, advanced computer technology, employee training and video surveillance, however to no avail. The lack of a reasonable punishment for the crime makes this type of risk acceptable to a thief.

At least ten other states have recognized the extent of this problem and have passed laws imposing strict penalties. A clear message must be sent to offenders that these crimes will not be tolerated.

For the above reasons the Association has urged this bills passage and applauds its report by the senate committee.