NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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Waste Tire Management Fee Bill Enacted

The Waste Tire Management Fee Bill A. 10837 - S. 8021 amends the New York State Environmental Conservation Law. It provides for a waste tire management and recycling fees for tire dealers.

Current law requires tire retailers to include waste tire management and recycling costs in the published selling price of a new tire. This bill allows tire retailers to choose to continue to include waste tire management and recycling costs in the published selling price of the tire or to line out a separate charge of up to $2.50 per tire.

The bill authorizes tire retailers to charge a separate and distinct charge of up to $2.50 for waste tire management and recycling costs. The charge would be required to reflect the actual waste tire management and recycling costs to the tire retailer, and would be listed separately on the invoice and in the published selling price of the tire. Further, the tire retailer would be required to state that the fee is imposed 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 Act instituted a $2.50 charge on every new tire sold, of which $0.25 goes to the retailer to cover their costs associated with proper waste tire disposal. Unlike surrounding states, New York requires that "any additional cost incurred by the retailer for tire disposal be reflected in the advertised price of the tire."

Consequently, to recover the costs associated with disposal, tire retailers must increase the price of the tire. However, NY retailers are unable to remain competitive, especially with border state rivals and Internet providers, by increasing their sales price per tire. The current $0.25 per tire reimbursement is significantly lower than the actual costs, creating an incentive to illegally dispose of waste tires. This result was not intended by the imposition of the $2.50 fee. This legislation ensures that all tire dealers are reimbursed for their costs and that all tires continue to be disposed of properly.

The bill was signed into law on July 7, 2008, and will take effect on the thirteenth day afterwards.

INSIDE THIS ISSUE

Attention Mobil Branded Dealers

ExxonMobil's announcement of its divestiture of the U.S. retail market has hit dealers with a one-two punch. Mobil branded dealers in downstate New York had been expecting an announcement that the company would be selling its retail assets. However, they expected that, in accordance with the Petroleum Marketing Practices Act (PMPA), these stations would be offered to the dealers.

During a conference call with its dealers, ExxonMobil confirmed that it plans to sell its company-owned stations to jobbers. The company has approximately 820 company-operated stations and 1,400 dealer leased sites to be sold. These stations are located throughout the United States, but there are large clusters in major metro markets. Texas, for example, has about 190 company-owned outlets, while there are roughly 170 in Florida. Other markets with high concentrations include New York, Virginia, Massachusetts and Illinois. In all, some 12,000 ExxonMobil branded stations in the U.S. sell about 14 billion gallons of motor fuel per year. Distributors already own most of these stations. A spokesperson for ExxonMobil stated that the U.S. has become a highly competitive market and that the company believes this transition is the best way for ExxonMobil to compete and grow in the future.

Two years ago, ExxonMobil sold its stations in upstate New York to its dealers. While dealers were ecstatic to have this opportunity, reality has not met expectations. Dealers purchased their locations and arranged for supply from selected ExxonMobil distributors. Dealers were offered Rack Plus deals.

For years such deals were the best way to assure a competitive price at the pump. However, something happened. Either ExxonMobil's competition found a way to supply less expensive product or ExxonMobil decided to sell the most expensive product in upstate New York. While ExxonMobil's rack price was competitive in the past, other companies are now retailing gasoline and diesel fuel for ten to twenty cents less per gallon than Mobil dealers are able to. Distributors, who are not used to confronting big oil, are shrugging their shoulders while the dealers supplied by them continue to lose money. Complaints to the distributors are fruitless.

The situation is becoming so critical that dealers are

threatening to take down the Mobil sign and sell unbranded. Whether this is a violation of their contract is irrelevant. It makes no sense to sell motor fuel at a price where the more you sell, the faster you go out of business. ExxonMobil's only response to the complaints is that it is sticking with its business plan. The question that downstate dealers need answered is what is this "business plan?"

It appears that selling the downstate stations to distributors circumvents the PMPA's provision, which gives the dealers' the right of first refusal. Even if the distributors decide to keep the dealers in business it is up to ExxonMobil to provide the distributors with a competitive wholesale price, something it seems unwilling to do. ExxonMobil dealers have never been afraid to fight back. They will fight for the right of first refusal, but even if they win, they will need to battle for the ability to change brands. The work has already started. It's time for you to get involved.

If you are interested in becoming part of the solution, please call Ralph Bombardiere at 518-452-4367

Open Supply Bill (S.6151 – A.9073) On Senate Calendar

Earlier this month A.9073, sponsored by Assemblymen Morelle (D), a bill that makes null and void any provision of a franchise agreement which prohibits a dealer of motor fuels from purchasing or selling unbranded motor fuel passed the Assembly 116 - 0. A week later, its counterpart, S.6151, sponsored by Senator Winner (R), passed the Senate 59-0. The Governor's office expects the bill to be sent for his veto or signature shortly.

The subject bill amends New York State's General Business Law, in relation to the sale of unbranded motor fuel at service stations. It allows gasoline retailers and distributors to purchase and sell unbranded motor fuel in addition to the brand of motor fuel supplied under the terms of a franchise agreement with a refiner. The provisions of the bill invalidates any provision of a franchise with a refiner that would prohibit a dealer or distributor from selling or purchasing unbranded motor fuel.

This bill would permit service station dealers who own their retail locations, and distributors who supply such locations, to sell unbranded motor fuel without the fear of repercussions from major suppliers.

Motor fuel franchise agreements have been described by the United States Congress as contracts of "adhesion." They typically include provisions, which permit a service station dealer or a distributor to use the trademark of a refiner. The dealer and distributor than must purchase and sell motor fuel supplied solely by that refiner. Dealers are usually prohibited under such agreements from selling motor fuel from any other source including unbranded motor fuels. Distributors are also prohibited from supplying unbranded motor fuel to franchised dealers.

This restriction has limited the availability of unbranded motor fuel to New York's motorist during periods of escalating prices. This has helped support higher than necessary gasoline and diesel fuel prices. Unbranded motor fuel often sells at a lower price than branded motor fuel. The availability of unbranded motor fuel would result in additional competition in the marketplace, and availability of unbranded motor fuel would help to open up competition. The effect of this bill will be to create another level of competition where one does not exist, at wholesale.

At this time high gas prices lead legislators to look for a legitimate avenue to reduce consumer prices. The price of motor fuel has risen steadily over the last few years. The only additional ingredient creating these price increases is profit for major suppliers, be it in the price of crude oil, refining, or markup in the wholesale price to dealers.

For the above reasons the association is taking great efforts lobbying the Governor to enact this legislation.

Exemption On Sales Tax On Credit Card Sales At Coin-Operated Car Washes – A8397 (Morelle) – S4971 (Seward) Passes Legislature

The subject bill amends the New York State Tax Law, expanding the sales tax exemption for coin-operated car wash services to authorize the exemption where payment is made by credit or debit card.

Under current law, coin-operated car wash services are exempt from sales tax. "Coin-operated" is defined to include coin-operated, currency-operated or token operated, but does not include credit or debit card machine transactions. If a coin-operated car wash business adds equipment to authorize payment by credit or debit card, then the coin operated services are not subject to sales tax under current law, but the services paid for through the credit or debit card machine are subject to sales tax. This requires a separate accounting for the credit or debit card transactions, with the associated additional burdens for the car wash business owner.

Car wash businesses install credit or debit card machines as a convenience to consumers and they should not be required to pay sales tax on these services, which would otherwise be exempt from sales taxation, because they are offering a more modem mode of payment as a convenience to the consumer.

In addition, when sales tax is required to be paid on car wash services paid for through credit or debit card machines, the car wash business is subject to double taxation because it must also pay sales tax on the products and equipment purchased to provide the car wash.

It is inequitable to tax these small businessmen at two levels in the chain of commerce and this bill would remedy this inequity.

The New York State Association of Service Stations and Repair Shops, Inc., it affiliates and members have supported passage of the bill by the legislature and now urge Governor Paterson to sign it into law. If enacted the law would take effect on the first day of a sales tax quarterly period as described in subdivision (b) of section 1136 of the tax law, occurring at least sixty days after this act shall have become a law.

Petroleum Bulk Storage Bill, A9019A(Sweeney) – S6055 (Marcellino) Passes Legislature

The subject bill amends the New York State Environmental Conservation Law, concerning petroleum and chemical storage facilities. The bill amends ECL to be consistent with federal regulations governing petroleum underground storage tanks.

What follows is a summary of the Bulk Storage Bill that has passed both houses of the State Legislature and will go to the Governor for his signature. The association and its legislative counsel worked to modify this bill to be as industry friendly as possible.

SUMMARY OF PROVISIONS:

- It modifies the definitions of "facility" and "petroleum." The term "facility" is modified to add underground storage tanks to include tanks that are 110 gallons or more.
- It excludes the storage of asphalt other than asphalt emulsions.
- The modification of the term "facility" does not change the applicability of the exemption to sites where there are only tanks (or interconnected tanks) with a system capacity of 1,100 gallons or less
- The term "petroleum" is broadened to encompass all of the products defined as petroleum and include synthetic oils and used oils
- It defines the terms "tank" and "spill" or "leak to authorize the Department of Environmental Conservation (DEC) to prohibit deliveries of petroleum to any tank that is leaking or where a leak appears probable or to a tank in violation of certain Petroleum Bulk Storage regulations.
- It set forth the procedure for prohibiting delivery of petroleum. A delivery prohibition would be evidenced by the attachment of an identifying tag, which may not be tampered with or removed.
- Owners and operators would be provided the opportunity for a prompt administrative hearing to review any such delivery prohibition.
- It allows tanks to be registered by an authorized representative if there are multiple tank owners at a facility.
- Owners must notify DEC when the authorized representative or the operator of the facility changes.
- Language is added to (1) clarify that while facilities with capacities greater than 110 gallons and up to 1,100 gallons must be registered with DEC, there is no registration fee, and (2) provide that owners who become newly subject to the requirements of this section due to the changes in the definitions of petroleum and facility must, within one year, bring their tanks into compliance with the regulations and register the facility with DEC.
- It clarifies the role of the State Petroleum Bulk Storage Advisory Council.
- It authorize DEC to set standards for new and existing facilities in the areas of design, equipment requirements, construction, installation and maintenance, and to promulgate rules establishing training requirements for operators of PBS facilities.
- It authorizes DEC to update the lists of hazardous substances, the bulk storage of which are regulated.
- It expands the definitions of "'person" or "persons"' and "release;" to make the definition of "storage facility" or "facility" consistent with ECL §17-1003: and to add a definition for "tank" that is consistent with the definition of that term in ECL § 17-1003.
- The bill amends ECL §40-0111 to authorize DEC to prohibit deliveries of hazardous substances to any tank that is leaking or where a leak appears probable or to a tank in violation of certain CBS regulations.
- A delivery prohibition would be evidenced by the attachment of an identifying tag, which may not be tampered with or removed.
- Owners and operators would be provided the opportunity for a prompt administrative hearing to review any such delivery prohibition.
- It requires DEC to promulgate rules establishing training requirements for operators of CBS facilities.

A.11756 – S.8708 Regulating Workers Compensation Trusts Enacted

An act to amend the workers' compensation law, in relation to individual and group self-insurers and security for payment of compensation and a default offset fund, creates a task force on group self-insurance This bill addresses the problems resulting from recent group self-insurer defaults. The bill, signed into law, on June 30 will take affect in 4phases, and will be fully effective January 1, 2009.

The bill:

- strengthens regulation of group self-insurers
- provides short term funding to pay the immediate costs resulting from the defaults
- creates a Task Force to identify potential changes to the group self-insurance program
- provides new regulatory authority and establishes new standards for group self-insurers. These include requirements that,

(1) group self-insurers submit regular financial reports to the Workers' Compensation Board (WCB) and the WCB prepare evaluations of group self-insurers' financial and regulatory compliance
(2) underfunded group self-insurers submit a plan for becoming fully funded
(3) a financial monitor be appointed for group self-insurers that fail to present a plan
(4) new members of group self-insurers submit a signed document to WCB indicating that they understand the responsibilities of membership.

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A.11756 – S.8708 Regulating Workers Compensation Trusts Enacted (continued)

The bill also establishes licensing and bonding requirements for group administrators and new criminal penalties for misrepresentations. It permits the Workers Compensation Board, (WCB) to review contracts, requires the WCB to assess members of defaulted group self-insurers, and requires group self insurers to disclose information about the group self-insurer in an annual report to members and the WCB. In addition, it establishes a moratorium on new group self-insurers to last until April 1, 2009. The bill creates civil penalties for licensed group representatives. It creates a new advisory committee for group self-insurers. It makes clear that the law applies to both individual and group self-insurers and operates to allow assessment for the payment of expenses arising out of the default of both individual self-insured employers and group self- insurers, including expenses required to make payments to injured workers.

Other sections of the bill include:

- clarify the Executive's and Legislature's intent that individual and group self-insurers that have ceased to self-insure are subject to the assessments provided under the law.
- establish new penalties for individual and group self-insurers that fail to maintain an adequate security deposit or misstate payroll.
- provide the WCB with the ability to borrow from the Fund for Uninsured Employers up to $52 million to pay claims or offset assessments against individual and group self-insurers arising out of defaults of group self-insurers.
- provide for a repayment mechanism by assessing individual and group self-insurers.
- establish a Task Force on Group Self-Insurance to examine the group self-insurance program and issue a report on recommendations for reform by February 1, 2009.
- require certain fees and penalties to be deposited into the fund for uninsured employers.
- clarify the assessment methodology for employers who have ceased to self-insure.
- limit incentive programs available for self-insurers to individual self-insurers.
- make the statutory provision governing the uninsured employers' fund consistent with the borrowing authority established in the law.
- raise the penalty for uninsured employers from $1000 per ten days without coverage, to $2000.