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

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**Bill S8146B – A11258, Indian Taxes**
**Nozzolio – Mc Gee**

The subject bill has passed both houses of the New York State Legislature. The Senate passed bill at the special session on August 8, 2008. The bill amends the State Tax Law, in relation to the sale of cigarettes. It seeks to enforce the collection of taxes on the sales of tobacco products to non-Indians at Indian owned businesses by prohibiting tobacco manufactures from selling these products to stamping agents who in turn are selling untaxed cigarettes to these businesses. It accomplishes this by prohibiting tobacco manufacturers from selling unstamped cigarettes to any agent that has not provided a certification, under penalty of perjury, that the cigarettes will not be resold untaxed.

There is currently in statute provisions mandating the collection of the sales and excise taxes on those sales of tobacco products to non-Indians at Indian owned businesses. In clear violation of these provisions, the Department of Taxation and Finance continue to ignore the intent and mandate of this law by not beginning the collection of these taxes.

This is no small amount of money as it has been estimated that the collection of these taxes could generate more than $400 million annually in state revenue. In an effort to continue to carry out the will of the legislature, this bill would specifically prohibit tobacco product manufacturers from selling untaxed or unstamped cigarettes to any licensed stamping agent that the manufacturer knows or should know is in turn selling those untaxed cigarettes in violation of the law.

The bill will become law sixty days after the Governor signs the it. The question is will he sign it? We will keep you posted

## INSIDE THIS ISSUE



**Bill S.175 – A.9136, Zone Pricing**
**Alesi – Bradley**

The Zone Pricing Bill which prohibits supplier from charging different price for motor fuel id different areas has passed the Senate at the special session today. The bill has already pass the Assembly in the regular session. The bill now goes to the Governor.

As the price of motor fuel increases and consumers find it difficult to fill their tank, many suppliers are enjoying a "windfall profit." Suppliers for no apparent reason are increasing the prices of gasoline and diesel fuel to the motoring public. The only justification is that the public is willing to pay. The only way to discourage these price increases is for government to initiate an investigation into the rise in cost of motor fuel.

One mechanism used by suppliers to control the price of motor fuel is by creating zones and offering the product at different prices depending upon what the traffic will bear. Oil companies claim that this practice is used to meet competition. In some cases this may be true, but in most it is not.

Zone Pricing as it is, is a marketing technique used by petroleum companies. These companies determine the geographical price zone based on the demographics of a certain area. If one area is more affluent than another the wholesale price to the service station dealer can be higher or lower. While many believe that the more affluent the neighborhood the higher the prices, this is often incorrect. There are many cases where the price is higher in areas that can least afford to pay these escalating prices. What is always certain, the less competition the higher the price.

The price of motor fuel begins at the exploration stage. The product is found, extracted from the ground, sold per barrel as raw crude oil, shipped to refineries, refined to different type products including gasoline and diesel, then transported to a terminal. There, it is off loaded and sent to a service station. The price of the motor fuel along this chain is subject to change. However, the only price the public sees is what's on the pumps. The smallest margin of profit is between the wholesale price to the service station and the price to the consumer. At times oil companies, to punish dealers, use zone-pricing practice. If the dealer does not sell the product at a price that the company determines the dealer's price increases. For example, if they want the dealer to make ten-cents per gallon but the dealer increases that margin, the supplier will increase the wholesale price. They will also take advantage of a situation where there is a lack of competition. The practice of zone pricing can be abused and in many cases is.

Legislation is needed to deter suppliers from taking advantage of motorists by using a pricing strategy that can be manipulated. While it would be in the publics best interest if the price of the product could be controlled from the well head to the automobile this is impossible. However, there is an ability to control the price from the supplier to the retail dealer and subsequently to the consumer. The provision in Senate Bill S973 will create a deterrent against discriminatory pricing.

The basic flaw in the zone pricing is that it is discriminatory and used by oil companies to take advantage of situations. If this is found to be true, some sort of penalty must be assessed on these abuses.

For the above reasons, the New York State Association of Service Stations and Repair Shops and its five affiliates and 3,500 members request that the Governor sign this bill into law.

**Attorney General Takes Shot at Service Stations Using Discount for Cash Program**

Attorney General Andrew Cuomo initiated an investigation of motor fuel prices on Long Island. The purpose of the investigation, according to the attorney general's office, was to stop gasoline stations from deceiving the public by posting a cash price on their street sign, but charging credit card customers a higher price once they reach the pump.

The pricing of motor fuel has always been under the direction of the New York State Department of Agriculture and Markets. The accusations by the Attorney General are not based on the laws we have been following for years. He is citing Section 349 and 350 of the General Business Law and we have always been regulated under Section 192.5 of the Ag. and Markets Law.

Mr. Coumo's Office developed the opinion that the current practices used by service stations to advertise the discount for cash program were not appropriate. Investigators were sent to monitor stations mostly on Long Island and issued a number of "cease and desist" orders. If a service station does not discontinue what the Attorney General considers deceptive practices a violation will be issued. We suspect the enforcement and hearing process would take on a "blackmail" posture. This would be similar to the one used by Attorney General Spitzer in his gas price and milk price gouging investigations. Service stations would be told pay me this now, and forget about your rights under due process, or pay me a lot more later.

In his press release, Cuomo said that his investigation revealed that approximately one-third of the Long Island gas stations surveyed engaged in deceptive practices, including wrongfully surcharging credit card customers. He claimed his people conducted a statewide investigation and discovered that the Long Island region has far more gas stations that illegally overcharge credit card customers for gas than any other region in the state.

Mr. Cuomo claims that his investigation found cases where gas stations on Long Island were engaging in false advertising by only listing the lower cash prices on their poll signs to attract customers into the station. The objection is basically based on the view that stations did not disclose the price was only for cash sales. When the consumers discovered that they were charged more to use a credit card some complained to the Attorney General's office who labeled the practice a deceptive "bait and switch" practice that added up to an additional usage fee for the motor fuel. He also said that the investigation determined that the service stations deliberately withhold the higher credit card price until the consumer has at the pump. This implies that the stations deliberately deceived the motorist consumer and prevented the motorist from comparative pricing from the street.

The crux of the charges is that New York State law does not permit retailers to impose a charge on customers who use a credit card. This is not News. We have been complying with this requirement for twenty years under the Ag. and Markets Law. However, the law does permit a discount for cash. The major requirement on service station that employ discount for cash programs is that the pumps must calculate the price advertised and that there are signs on the pump indicating the price for cash and credit sales. The truth of the matter is that no state law regulates poll or street signs. There is no regulation that says a service station must have a street sign.

Efforts by this and other associations have fallen on deaf ears. A meeting is scheduled between the Attorney General's Office and representatives from Agriculture and Markets. Maybe we will see some relief or at least direction after this meeting. As we understand it, from discussions with an assistant attorney general, if there are either no street or poll signs, or if the signs have both the cash and credit card prices posted, their office will be satisfied for now. Proper signs at the pump will continue to be required.

**Dispenser Emergency Valve Must Be Tested Annually**

According to the New York State Fire Code sections 2205.2.2 and 2206.7.4, an approved emergency shutoff valve must be properly installed in the liquid supply line at the base of each dispenser supplied by a remote pump. The dispenser emergency valve, or shear valve is designed to close automatically when the dispenser is knocked over or involved in a fire. This so-called impact or breakaway valve is intended to prevent the free flow of fuel in either of these events. The valve must be tested annually by manually tripping the hold open linkage.

**Small Repair Shops and Hybrid Vehicles**

Rising fuel prices have been a headache for consumers, but the cost of gas has done wonders for the sale of hybrid vehicles. As gasoline cruised past $4.00 per gallon, people bought hybrids in record numbers. This may signal hard times ahead for smaller repair shops. At least one expert predicts that half of the independent repair shops could close within the next ten years.

Dealerships for manufacturers that have launched hybrid models seem to have no worries. These dealerships already have equipment and trained technicians to deal with repairing hybrids. In fact as independent repair shops close, these dealerships will have an extra bonus, as customers have no choice but to bring their hybrids to dealers, or as repair shops that only work on non-hybrids are forced to refer out the work to other sources.

Training technicians to work on hybrids is only part of the equation. Thousands of dollars must be spent on the additional equipment necessary to work on hybrids. On top of that are the manufacturer charges for the necessary codes to work on hybrid computer systems, if those codes are available at all for a specific model. As one repair shop owner put it, "There's a lot of different electronics stuff out there, and information is tough to get a hold of, and it's costly."

Hybrids are a different breed from the cars of yesterday. For example, the Toyota Prius has 14 different computer systems in it. Trying to work on it without the right computers and codes would be like flying blind. Although the gas engine, brakes and shock repairs are not all that different from repairs on regular cars, repairs as simple as replacing a battery pack are not recommended for the untrained technician due to the very real risk of electrocution.

There is some good news for dealers who are trying to get ready to repair hybrids. Most people currently studying automotive technology in this country are being taught to work on hybrids. Additionally repair shops have a little time too prepare themselves, because most of the hybrids out there are new and therefore still under warranty.

But by 2011, some analysts predict that 20% of all cars on the road will be hybrids. This means that in very few years many motorist will be unable to bring there cars to repair shops that are not equipped to handle the new technology. Those repair shops will be force to send the work out, eroding their customer base, not only then, but in years to come as more and more cars use the new technology.

**Hold Open Clips Banned In New York**

A new state fire code prohibits the use of hold-open clips at service station fuel dispensers. This reinstates a ban which had been in effect from the early 1980's to 2003, when it had been lifted. The danger viewed by fire officials is static electricity service station fires. These are caused when static discharges from a person to the pump nozzle, igniting the gas vapors and starting the fire. In the presence of a hold open latch, fuel will continue to flow helping to spread the fire.

From 1992 to 2006 there have been at least 170 static electricity service station fire. In the past year there have been 3 serious fires attributed to static electricity. With about 11 billion refuelings in the United States per year, the problem does not sound major, unless you are involved.

A typical scenario is a person begins fueling their car, engages the hold open latch, and slides back into their car for protection against the weather, or to warm up. When they slide across the seat, on entering and exiting the car, they can acquire a static charge of thousands of volts. Unless they discharge this, through their shoes, or by touching metal, such as a grounded car, an arc can leap from their hand to the nozzle.

Hold open latches are not the only culprits in allowing fuel to continue to flow. In their absence many motorists defeat the system by using their gas cap or other items to chock the nozzle open. This can be even worse since it can defeat the nozzle' automatic shutoff system and cause gas spills if the tank overflows. One recommendation made to the fire association is that attendants should be trained to shut off the pump if motorists reenter their vehicle. Another solution that has been recommended is that nozzles be redesigned such that it is not as easy to stick a foreign object in there to keep the latch open.

**Status Update For The Shared Network Program.**

The comment period for the proposed Shared Network Regulations ended on September 8, 2008. Since there were no comments that would require the DMV to modify the draft regulations, they can be adopted as written. The final version of the regulations has been forwarded to the Secretary of State for formal adoption on September 24, 2008.

DMV will be mailing information to all of the eligible inspection stations announcing the program introduction shortly. Included in this package will be an application, instructions on how to apply, and information defining the steps any interested inspection station must follow to obtain approval. You will also receive this packet in hard copy and via email. The application and instructions will also be posted on the DMV website. This information will be released concurrent with adoption of the regulations.

The newly adopted regulations will be available on the DMV website and in hard copy in the near future.

**ConocoPhillips to Sell All Stations to PetroSun West**

ConocoPhillips is expected to sell the remainder of its 600 company-owned gasoline stations to PetroSun West LLC for $800 million, effectively exiting the gas retail business to focus on exploration and refining. The deal is expected to close by the end of the year, according to a Wall Street Journal report.

Seattle-based PetroSun West plans to upgrade the properties and add fresh sandwiches, financial services and possibly dry cleaning, Chief Executive Sam Hirbod told the newspaper. The majority of the stations are located in urban, high-traffic areas along the West Coast, from Seattle to Los Angeles.

ConocoPhillips will continue to refine and sell fuel on a wholesale basis to stations under its Conoco, 76, and Phillips 66 brands, according to the report.

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**Credit Card Fair Fee Act (HR5546/S3086)**

The credit card interchange fee is the biggest credit card fee you've never heard of. Nearly $2 of every $100 American consumers spend using credit cards go directly to the credit card industry through the interchange fee. In 2007 alone, America consumers paid over $42 billion in credit card interchange fees. Even consumers who don't use plastic pay more through higher prices. And the credit card interchange fee is set in secret - consumers don't know they're paying it through higher retail prices. Interchange fees have risen a staggering 133% since 2001. The fees can't be negotiated and are not adequately disclosed to merchants or consumers. That's why unfair credit card interchange fees continue to rise rapidly despite improved processing technology, consistently low interest rates, and rapidly rising card volume.Moreover, Americans pay among the highest credit card interchange fees in the world, three times what British consumers pay for example.

A rare bi-partisan consensus has emerged: HR 5546/S 3086, The Credit Card Fair Fee Act which stops the price-fixing by the credit card industry and uses a transparent market-based process. Better than three in four (77%) voters favor the Credit Card Fair Fee Act, according to a poll released by the Merchants Payments Coalition (MPC). According to the survey, public sentiment that something needs to be done about the credit card industry is at an all-time high.

The Credit Card Fair Fee Act (HR 5546/S 3086) uses proven market mechanisms to stop the price-fixing by the credit card industry. The Credit Card Fair Fee Act:

- Provides a seat at the table for merchants and credit card issuers alike
- Stops the secrecy, provides for the first time ever an open and transparent process to negotiate credit card interchange fees
- Offers the complete negotiation framework necessary to hammer out fair credit and debit card interchange fees based on competitive market dynamics
- Uses mechanisms that work in the real world. Congress has long since successfully addressed the problem of a broken market using a similar framework; Congress amended the framework as recently as 2004

The association supports this important legislation which has been passed by the House Judiciary Committee.