

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

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INSIDE THIS ISSUE

- ⇒ **Swipe Fee Delay Amendment Fails**
- ⇒ **Federal Right To Repair Bill Garners Support**
- ⇒ **Stage II Vapor Collection Systems Enforcement Directive**
 - ⇒ **Another Injunction For The Indians**
 - ⇒ **New York State Legislative Roundup**

MORE INSIDE

Swipe Fee Delay Amendment Defeated

It's a huge victory for service station retailers, convenience store retailers and merchants across the U.S. today, as the Senate rejected an amendment offered by Senators Jon Tester (D-MT) and Bob Corker (R-TN) to delay swipe fee reform.

The vote was 54-45 in favor of the Tester-Corker amendment, six short of the 60 needed to delay swipe fee reform for six months-effectively killing it, and five more than the 40 votes service stations and c-stores were hoping for to protect swipe fee reform.

The Federal Reserve previously found that although a debit transaction costs only four cents to process, merchants are charged on average 44 cents every time a customer swipes a debit card. The Federal Reserve proposed capping interchange fees at 12 cents, a 200% profit on every transaction. The Tester-Corker amendment sought to delay and kill that proposal.

“This vote is an enormous win for consumers, since it fundamentally changes the rules in how banks collect \$1 billion every month in debit swipe fees from consumers,” said NACS Chairman Jeff Miller, who is president of Norfolk, Va.-based Miller Oil Co. “The vote means that consumers will now have a choice in how they pay for goods, and retailers will be able to provide incentives to reward customers for selecting lower-cost options, instead of funneling these costs directly to the banks. Today's vote clearly shows the importance of making your voice heard.”

“This was a 10-year battle to kill the stranglehold that the banking industry has on how our country's payment system operates and we were fighting against an opponent

that has poured hundreds of millions of dollars into maintaining the status quo. Our convenience and fuel retailing industry played a leading role in this historic victory with petition campaigns from a record-setting 5.4 million consumers demanding change, the tens of thousands of letters and calls from retailers to Congress and the hundreds of personal visits that our members made to congressional offices both on Capitol Hill and in hometown offices,” he added.

With swipe fee reform safe, the final rule on debit card swipe fees, as required in the Durbin amendment, is set to be implemented on July 21. The final rule, including where exactly fees will be capped, should be released any day.

Interchange fees are currently the second highest operating cost for most merchants after labor.

Debit Swipe Fees Vote Went Down To The Wire

Given the choice, many senators preferred to see the Tester-Corker amendment to delay debit card swipe fee reforms buried underneath a stack of papers, never to see the light of day. But they did have to cast a vote, putting some in a precarious situation: side with Wall Street, or side with retailers and consumers?

Sen. Jim Webb's (D-VA) office fielded a lot of phone calls from constituents on Wednesday, the majority asking him to vote “no” on the Tester-Corker amendment, reports Roll Call. But come vote time, the senator cast a “yea” vote, commenting to the news source that he was convinced by Sen. Bob Corker's (R-TN) pitch that the

amendment would make swipe fee regulation “more fair” by taking into considering overhead costs.

“I think that they made significant adjustments from where they were a year ago,” Webb told the newspaper, adding, “At any rate, it’s over.”

Sen. Mark Begich (D-AK) was also undecided, asking retail and banking/credit card lobbyists to give a final pitch — the day of the vote.

“This is kind of his style,” a Senate aide told Roll Call, but cautioning that it’s “never just what lobbyists think.” Back home in Alaska, Begich heard from constituents on this issue as well as a representative of the Alaskan credit unions.

“The banks won in Begich’s office, but they lost the day,” writes Roll Call, adding, “More than a year of lobbying, ferocious whipping and Democratic infighting all boiled down to a tense vote on the Senate floor Wednesday afternoon that cost banks billions of dollars.”

In Arkansas, Walmart was active in communicating to senators that a delay was bad for consumers and retailers, “but I’ve heard more from folks who own convenience stores,” Senator Mark Pryor told the Arkansas Democrat-Gazette. Pryor voted against delaying reform.

Following the vote, Sen. Richard Durbin (D-IL), who has lead the charge to reform debit card swipe fees, beginning with his amendment passed as part of the last year’s financial service overhaul bill, didn’t appear surprised by the final vote, notes Roll Call.

“He’s the only guy in America who’s beaten the banks twice,” a senior Democratic aide

commented.

Corker, meanwhile, said he wouldn’t pursue this issue again. “I think it is water under the bridge,” he said. “I’ve got other fish to fry, and we pretty well cooked this one.”

Some national groups have suggested writing thank-you notes to senators who voted against swipe fee delays. New Yorkers don’t enjoy this luxury. Both Senators Charles Schumer and Kirsten Gillibrand voted in favor of the delay amendment.

NHTSA Issues Final Rule; Response to Petitions on Lighting Standards

The National Highway Traffic Safety Administration (NHTSA) on April 27 issued a *Final Rule; Response to Petitions for Reconsideration* on FMVSS NO. 108; Lamp, Reflective Devices and Associated Equipment.

The rulemaking is in response to seven petitions for reconsideration filed by various affected manufacturers and industry associations. This original rulemaking dates to a 1995 NHTSA Notice of Proposed Rulemaking (NPRM) to harmonize the U.S. visibility requirements with the United Nations Economic Commission for Europe (UNECE or ECE) requirements. Over the ensuing 15 years there have been two Supplementary NPRMs and a Final Rulemaking in August 2004 that limited the scope to only visibility and terminated a proposed rulemaking that would have allowed an option of providing amber rear side marker lamps and reflectors, as well as terminating the proposed regulation of front and rear fog lamps.

The latest issues included:

- Disagreement as to the effectiveness of NHTSA's harmonization of FMVSS 108 pertaining to ECE Regulations No. 53 for Vehicles with less than four wheels (i.e., motorcycles).
- The possibility that new definitions for the effective projected luminous lens area would change the existing requirements.
- A request to increase the lead time for wide vehicles (currently until Sept. 1, 2011 for vehicles less than 2032 mm in overall width, or until Sept. 1, 2014 for vehicles of 2032 mm or more in width) to be extended from 10 years to 15 years due to the possible costs incurred in complying.
- Concern and disagreement about NHTSA's decision that the choice for compliance method is irrevocable.
- A request for clarification of requirements for lamps mounted less than 750 mm above the road surface.
- A request for the elimination of the downward photometric requirements for lamps mounted 15" above the road surface.

Ultimately, only the motorcycle industry prevailed in this rulemaking, with NHTSA accepting the Motorcycle Industry Council's (MIC) petition regarding motorcycle turn signal lamp visibility as a better harmonization of accepted global standards. The other petitions were denied.

Federal Right to Repair Bill Gains Support

Six legislators have joined as co-sponsors of the Motor Vehicle Owners' Right to Repair Act (H.R. 1449). The newly-added legislators include: Reps. Marcia Fudge, D-Ohio; Jim Gerlach, R-Penn.; Mike McIntyre, D-N.C.; James Moran, D-Va.; James Sensenbrenner, R-Wisc.; and Glenn Thompson, R-Penn. The six congressmen

join chief sponsors Reps. Edolphus Towns, D-N.Y. and Todd Platts, R-Penn., as supporters of the pro-consumer, pro-small business legislation.

Right to Repair legislation requires that car companies share with the independent aftermarket the same information, software and tools that they provide their franchised new car dealers. The bill provides trade secret protection for the manufacturers and does not infringe on the warranty responsibilities of the new car dealers.

Proposal to Phase-Out Hydrofluorocarbons

A joint proposal offered by the United States, Canada and Mexico would push for an 85 percent reduction in use of hydrofluorocarbons (HFC) by 2033 under the Montreal Protocol. Developed countries would begin phasing out use of HFCs in 2015, while developing countries would begin the phase out in 2017, reaching 85 percent by 2043. The proposal does not specify baseline levels for the reductions. HFC-134a is used as a refrigerant in most vehicle air conditioners and as a propellant in some aftermarket products. While HFCs were used as a substitute for chlorofluorocarbons due to concerns of ozone depletion, HFCs are now being targeted due to their impact on global warming. For example, HFC-134a is believed to have a global warming potential of 1400.

The North American proposal is aimed at implementing a 2010 declaration signed at the Bangkok meeting of the Montreal Protocol where the signatory countries committed to phasing out HFCs due to their impact on climate change. However, the

declaration did not include any specific requirements that would need to be met by the countries. The North American countries plan to push for approval of their proposal at the November meeting of the Protocol in Bali.

Justice Department Rules That Visa, MasterCard Must Compete On Price

The U.S. Department of Justice finalized its consent decree with Visa and MasterCard, marking another huge win for retailers to move into a competitive market with the credit card companies.

In October 2010, the Antitrust Division of the Department of Justice (DOJ) filed suit alleging that Visa and MasterCard were violating the Sherman Act with their anti-competitive and deceptive credit card pricing policies, marking the first time that the DOJ intervened against the anti-competitive practices to force price competition. Visa and MasterCard settled with the DOJ. With that decision, merchants are now able to offer consumers discounts between cards and force the cards to compete on cost.

“The United States has carefully considered the various questions and suggestions contained in the comments and continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Amended Complaint” against MasterCard and Visa, stated the DOJ.

The Merchants Payments Coalition, of which NACS is a founding member, issued the following statement regarding yesterday’s announcement:

“Merchants across the country applaud the Department of Justice for recognizing Visa and MasterCard’s anti-competitive actions and moving forward with its litigation. The initial consent decree released in October and today’s settlement reinforce Congress’ efforts to rein in the anti-competitive fees and provide a useful complement to the pending swipe fee reforms that address debit cards. While the congressional reforms address debit cards, this much-needed action is an important first step towards correcting anti-competitive practices in the credit card market.

“Unfortunately, based on past experience, merchants expect that Visa and MasterCard will continue doing everything possible to hide their prices, prevent full competition and continue the bad acts that drew antitrust action in the first place — regardless of the terms of the settlement. American Express takes the cake in its affront to Main Street as it fights in court to prevent Americans from getting discounts at the register.

“Merchants across the country look forward to continued investigations of Visa and MasterCard’s anti-competitive practices by the Department of Justice so that business owners and their customers will have a fully competitive system in the future.”

Stage II Vapor Collection Systems Enforcement Directive

The Association has received the following communication from the DEC.

This message has been sent to you because you expressed an interest in New York State's Stage II Vapor Collection System requirements found at 6 NYCRR Part 230

and anticipated revisions to those regulatory requirements.

The Department of Environmental Conservation (DEC) issued an enforcement discretion directive concerning Stage II Vapor Collection Systems. The directive can be found on the DEC website at <http://www.dec.ny.gov/regulations/74990.html>.

Essentially, the directive provides that:

- 1) New gasoline dispensing facilities (GDFs) built after January 1, 2011, and GDFs that become subject to Stage II requirements after January 1, 2011, need not install Stage II; and
- 2) Existing GDFs must either continue to comply with the regulations until they are amended, or decommission their stage II systems in accordance with the decommissioning procedures included in Appendix A of the directive.

Should you have any questions, feel free to contact the Association Office.

Another Injunction For The Indians

New York State is under another court order preventing it from taxing cigarettes sold by Seneca Indian Nation retailers to the general public at reservation stores.

The western New York tribe is the biggest seller of cigarettes among the state's Indian Nations. The appellate division of state Supreme Court granted its request for a temporary restraining order Thursday.

The order bars collection of the \$4.35-per-pack tax on Seneca Nation-bound cigarettes

until June 20. It comes one day after a state Supreme Court judge in Buffalo lifted a similar order after rejecting the western New York tribe's procedural challenge to regulations adopted by state taxing officials.

The Seneca's are appealing that decision.

There's no immediate comment from Gov. Andrew Cuomo's administration on the latest delay.

What a Joke

Station Owners In Connecticut File Suit Against Distributors

Gas station operators in Connecticut have filed suit against several gasoline distributors, alleging the companies are forcing them and others to pay unreasonable prices for gas. That in turn, the plaintiffs contend, is playing a key role in the state's high gas prices.

According to an Associated Press report, 11 plaintiffs who operate 16 gas stations are listed in the unfair trade practices lawsuit, which was filed in Hartford Superior Court on Thursday. The defendants include Waltham, Mass.-based Alliance Energy LLC and Irving, Texas-based Exxon Mobil Corp.

The gas station operators are seeking an undetermined amount of damages and a court order mandating fair pricing for gasoline products, among other actions. However, Alliance Energy is vowing to fight what its owners call "unfounded accusations."

Alliance Energy acquired 88 gas stations in Connecticut from Exxon Mobil this

February. The plaintiffs, who operate some of those sites, allege that when Alliance took over, it began charging 17 cents to 22 cents more per gallon of gas than what they were paying under Exxon Mobil's ownership, the news report stated. Also, the plaintiffs said Alliance has imposed several other conditions that hinder their ability to compete.

"In mid-May, one of my clients complained that there was a 39-cent differential between what he was paying (for gas) and what a competing station was able to charge," said Richard Weinstein, a West Hartford lawyer representing the plaintiffs. "They've all incurred substantial price increases since Alliance took them over, and the dealers have passed those price increases on to consumers."

According to AAA's Daily Fuel Gauge Report, the average price per gallon of regular gas in Connecticut is \$4.027 as of this morning. Only three other states top the \$4 mark: Alaska, Hawaii and Illinois.

Alliance Energy is one of the largest petroleum marketing distributors in New England and distributes fuel through approximately 500 locations in seven states from Maine to Pennsylvania. The company is owned mostly by the Slifka family of Massachusetts and also has the contracts to provide fuel and operate convenience stores at all of Connecticut's highway service plazas. Besides Exxon and Mobil, the company distributes gas for Sunoco, Shell, CITGO and Gulf stations, as well as unbranded fuel for Global stations, according to the Associated Press.

The Slifkas also own Global Partners LP, another large gas distributor based in Waltham that owns and supplies fuel to about 190 Mobil gas stations in New

England and distributes Mobil gas to another 30 independently owned stations.

Richard Slifka, whose family owns both companies and is vice chairman of Global's board of directors, declined to comment specifically on the lawsuit's allegations on Thursday, but said Alliance will fight the claims. "We believe that it's really without merit," Slifka told the Associated Press.

Weinstein said one of his concerns is the scope of Alliance and Global Partners' influence on gas pricing, given the large number of stations owned by the companies in the region. He said he wasn't sure how big the companies' influence is, but suspects it's substantial. The Connecticut lawsuit appears to be the first of its kind against Alliance, according to the news report.

The plaintiffs also claim the Exxon Mobil-Alliance deal violated the state's Petroleum Products Franchise Act because the station operators weren't offered good-faith proposals to buy the properties before they were acquired by Alliance.

Memorandum In Opposition
Bill Number: A1160 – S3734
Sponsor: Assemblyman Bing (MS)
Senator Marcellino

The subject bill amends the New York State General Business Law, and Bank Law, in relation to enacting the private automated teller machine safety act; requires operators of private automated teller machines to register their machines with the superintendent of banks; imposes a fee for the registration of such machines; provides monetary penalties for those operators and building owners who do not comply with the provisions of the act.

This bill will amend the banking law by adding a new Article II-aaa and the general business law by adding a new section 399-yy. The provisions of this article shall apply to any unenclosed automated teller machines located in any building, structure, or space whose primary purpose or function is unrelated to banking activities, where such automated teller machine is available for use only during the regular hours of operation of the building, structure, or space in which such machine is located. It will require that every automated teller machine to be registered in accordance with the provisions of this article.

The sponsors point to identity theft as being a problem They neglect to mention that nowhere in the 93-page FTC on the subject report did the terms “automated teller machine” or “ATM” appear. Once again our industry is faced with unreasonable regulation to solve a problem that doesn’t exist while being expected to solve New York State’s budget woes by paying another needless fee

For the above reason the New York State Association of Service Stations and Repair Shops, Inc., its affiliates and members oppose this bill and ask it be defeated.

Memorandum In Opposition

Bill Number: A1970 – S603

Sponsor: Assemblymen Jeffries (MS)

Senator Peralta

The subject bill amends the New York State General Business Law, in relation to prohibiting more than one increase in the price of gasoline in any twenty-four hour period. The purpose of this bill is to prohibit gasoline prices from being adjusted at the pump multiple times daily on the same lot of

gasoline, which was purchased wholesale at a fixed price.

This legislation it will make it unlawful for anyone engaged in the sale of motor fuel, or anyone who produces and stores or exchanges motor fuel at a terminal or facility and who sells or transfers motor fuel through the loading rack at such terminal facility, or an affiliate of such, to increase the price of any grade or quality of motor fuel sold at a retail outlet more than once in a twenty-four hour period. Any violation may result in a civil fine of not more than five hundred dollars to be collected by the corporation counsel for any city or by the appropriate attorney of any political subdivision as shall be designated by the governing body of such political subdivision.

The legislature feels that as gas prices soar, price gouging follows. Typically the motor fuel industry is lumped to together and suppliers and retailer are the focus of enforcement. Unfortunately the State does not have the muscle to go after suppliers and settles on going after the people least able to defend themselves, the retailers.

For the above reason the New York State Association of Service Stations and Repair Shops, Inc., it affiliates and members oppose this bill and ask it be defeated.

Memorandum In Support

Bill Number: S3410

Sponsor: Senator Golden

This bill amend the tax law, in relation to the tax on certain tobacco products by capping the state imposed tax on cigars at 75% of the wholesale price or \$1.00 per cigar, whichever is less. To remain competitive,

and to provide the state with a stream of revenue it can depend upon, it is only logical to impose a reasonable tax cap on cigars, allowing the state to continue collecting revenue and establish ourselves as more competitive to surrounding states in the cigar market.

Currently, some New York consumers are avoiding the high tax by purchasing the cigars over the Internet, or from non-taxed sources such as Native American smoke shops. Some consumers can also go to neighboring states with lower tax rates including Pennsylvania (which does not tax cigars) , Connecticut (which levies a 27.5% tax), New Jersey or Massachusetts (both which levy a 30% tax).

The current tax rate is 75% of the cigar's wholesale price. As such, the tax on a 25-cent cigar is equal to just under 19 cents, while the tax on a handmade cigar could be as high as \$11.25 for just one cigar.

By capping the wholesale sale price on cigars at 75% or \$1 dollar per cigar, whichever is less, we can save jobs in New York and prevent people from crossing borders, using the Internet and purchasing from non-taxed sources such as Native American smoke shops.

For the above reasons the New York State Association of Service Stations and Repair Shops, Inc. its affiliates and members support this bill and urge it become law.

Memorandum In Opposition
Bill Number: A6765
Sponsor: Assemblyman Weprin

This bill amends the general business law, in relation to credit cards issued by gas

stations. It requires requires gas stations charge the same rate for purchases of gasoline made by gas station credit cards as they charge for purchases made by cash

The sponsor holds that it is a generally common practice for gasoline station s to offer holders of their company's credit card, gasoline at the cash price. This practice may be as old as the gas card itself, and many consumers sip up for gas cards with this expectation in mind. While it is not uncommon, or in any way deceitful to charge a higher rate for credit card purchases than those with cash, that should not be the case when the consumer is paying with a credit card issued by that gas station.

POS Credit Card machines are often incapable of distinguishing one credit card from the other at time of service. This differentiation is made by the bank after a batch transaction. Additionally, several supposed proprietary cards are nothing more than Visa's and MasterCard's with rewards attached. The whole credit card system is so confusing as to make this proposal unwieldy and unfair to the small business man.

For the above reasons the New York State Association of Service Stations and Repair Shops, Inc. its affiliates and members opposes this bill and urge it be defeated.

Memorandum In Support
Bill Number: S1200 – A6999
Sponsor: Senator Griffo –
Assemblymen Russel

The subject bill amends the New York State Tax Law to establish a biodiesel tax exemption. It expands tax exemption on all blends of biodiesel in New York State.

Section one of the bill amends paragraph 7 of subdivision (a) of section 301-b of the tax law to change the current exemption for B20 to include all biodiesel blends. The amount of the exemption is based on the percentage of biodiesel per gallon. Section two provides for an immediate effective date with provisions. Existing law, Chapter 109 of the laws of 2006 provides an exemption for B20 and no other blend.

In 2006, New York State enacted Chapter 109, which provided a partial B20 biodiesel exemption. B20 is a blend of 20% biodiesel and 80% diesel. This legislation would expand the exemption to include any blend of biodiesel. New York should make every effort to foster the development and support the growth of the renewable fuels industry in the state.

The New York State Association of Service Station and Repair Shops, Inc., its affiliates and members believe that not only is the price of motor fuel artificially high, but taxes need to be reduced as well. This is a small step in the right direction. We urge this bill be passed into law.

General Counsel Corner

Winning The Race To The Courthouse
Courtesy Of The PMPA

*By Peter H. Gunst
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In *Mac's Shell Service, Inc. v. Shell Oil Products Co.*, 559 U.S. ____, 130 S. Ct. 1251 (2010), the Supreme Court ruled unanimously that a dealer, faced with a renewal agreement that he or she considered to violate the PMPA, could not sign the agreement "under protest," and then challenge its terms leisurely in court.

The only recourse open to a lessee dealer under the PMPA, the Supreme Court said, was to refuse to sign the new franchise agreement and to file suit immediately during the 90 day notice period, requesting temporary injunctive relief to maintain his or her franchise relationship until a full trial could be held on the dealer's PMPA claim. Without temporary injunctive relief, the dealer would face the Hobson's choice of turning in the keys or abandoning his or her PMPA claim.

The Supreme Court's ruling highlighted the importance of the preliminary injunction provision of the PMPA, 15 U.S.C. § 2805(b), because it may well be the dealer's only remedy. A recent decision suggests that the protection it affords is quite robust indeed.

Atlantis Petroleum, LLC v. Getty Petroleum Marketing, Inc., 2011 U.S. Dist. LEXIS 42767 (E.D. Pa. 2011), involved a dispute between Getty Petroleum and a marketer that subleased 71 branded service stations from Getty Petroleum. The dispute had its roots in the marketer's disastrous purchase and resale of diesel fuel in 2008, which left the marketer in hock to Getty Petroleum for over \$10 million.

The Marketer claimed that it subsequently had worked out a plan with Getty Petroleum under which it would pay down its debt to \$6 million by obtaining a bank loan, and Getty Petroleum would lease it another 58 stations to generate sufficient revenue to pay down the loan. The marketer in fact did pay Getty Petroleum approximately \$4.5 million from the bank loan proceeds, but it never received the 58 stations that it claimed it had been promised.

When the financial relationship between the parties remained rocky, Getty Petroleum on

March 25, 2011 sent the marketer a letter terminating its sublease for all of the stations effective April 25, 2011. On April 11, 2011, however, the supplier advised the marketer that termination would occur in less than 30 minutes, and requested that the marketer surrender the stations within two days. This set off a race to the courthouse.

On April 12, 2011, Getty Petroleum hightailed it to the federal courthouse in New York City, filing suit for breach of contract and requesting an order requiring the marketer to surrender its stations. The marketer responded by scrambling to the federal courthouse in Philadelphia later on that same day, where it sought an immediate temporary restraining order (TRO), as a precursor to a preliminary injunction barring Getty Petroleum from terminating the sublease, or doing anything to effectuate termination.

In granting the TRO requested by the marketer, the federal court in Philadelphia emphasized the considerable force that Congress had put into the PMPA's temporary injunction provision.

Although recognizing that normally a court should decline to rule on a request for injunctive relief where the same matter is at issue in another district court in an earlier-filed action, the court concluded that that course of action was not open to it under the PMPA. The court held:

We find that because of the language and purposes of the PMPA, the instant action is one of the “rare or extraordinary” cases in which the first-filed rule does not apply Congress has afforded courts little discretion in determining whether a franchisee is entitled to injunctive relief under the PMPA.

The court recognized the considerable

latitude that Congress had provided to franchisees seeking a preliminary injunction under the PMPA. Instead of demonstrating a likelihood of ultimate success on his or her claim, the franchisee need only show the existence of “sufficiently serious questions going to the merits to make such questions a fair ground for litigation.”

The marketer had satisfied that loosened standard through its allegations of inadequate notice and concerning Getty Petroleum's perfidy in failing to deliver the 58 additional stations it allegedly had promised the marketer. The court emphasized that the PMPA provided the marketer “not merely ... a defense to be used during eviction proceedings,” but also the affirmative right “not to be subject to an eviction proceeding in the first place.”

In sum, the PMPA's injunction provision provides a strong bulwark in defending against a franchisor's effort to put its franchisee on the street.

Building Used Primarily as Service Station Qualifies for 15-Year Recovery

The Internal Revenue Service Office of Chief Counsel, in a chief counsel advice memorandum released June 10, determined that a building primarily used as a service station is properly includible in that asset class for depreciation purposes, including a portion of housing office space that is attached but under a separate roof.

The taxpayer that owns the property at issue is in the business of providing full-service truck leasing and contract maintenance programs, the CCA said. In addition to a fuel island, parking lot, and billboards erected on the property, there is a special

purpose industrial building containing restrooms, a work room, a mechanical room, a truck service center, and a truck wash, plus office facilities and a conference room attached but under a separate roof.

The taxpayer sells fuel, oil, and other petroleum products at the location as part of its maintenance and repair business, both for vehicles it leases to others and to other truck fleet owners to whom it markets maintenance and fuel services.

Floor Space Allocation considered at issue whether the taxpayer used the property's building primarily as a service station building during the tax year it was placed in service, the CCA said. It noted that the truck service center portion of the building possesses the features typically associated with a service station building, including service bays and the adjacent fuel island.

"The truck service center (including the service bay for the drive-through truck wash) comprises approximately 84 percent of the floor space of the Property building," the Office of Chief Counsel said." Consequently, we conclude that Taxpayer used the Property building primarily as a service station building during the taxable year." The entire building, including the office space, is thus classified as 15-year recovery property, it said.

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. To use this service, please call 607-398-7260.

We Have Changed Our Web Address

The Association is pleased to announce a new web site. The old website has been completely revamped to provide you with easier faster access to the information you need. The new address is

www.nysassrs.com

Our e-mail address has changed to:

ssra@nysassrs.com

In addition to being able to read back issues of newsletters, and providing you with links to important sites we have added a bulletin board to keep you better informed as stories break.

**Did Your Worker's Comp
Policy Give You 35% Of Your
Premium Back Last Year?
Call The Association Today
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**YOU CANNOT DO
INSPECTIONS IF ANY OF
YOUR EQUIPMENT IS
MISSING OR INOPERABLE.**

**PERFORMING AN
INSPECTION UNDER THESE
CONDITIONS CAN RESULT
IN REVOCATION OR
SUSPENSION OF YOUR
INSPECTION LICENSE**

Lawley

New York State Association of Service Stations & Repair Shops, Inc.

Declares Dividend

Workers Compensation Safety Group #536
Pays dividend for the 19th consecutive year.

35%

(Applies to Policy Term 5/1/09 - 5/1/10)

**Dividend checks will be mailed
direct to your address
by The State Insurance Fund**

Recent Dividend History

35%	08-09
35%	07-08
30%	06-07
30%	05-06

Lawley – Group Manager
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Fund Safety Group #536

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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:

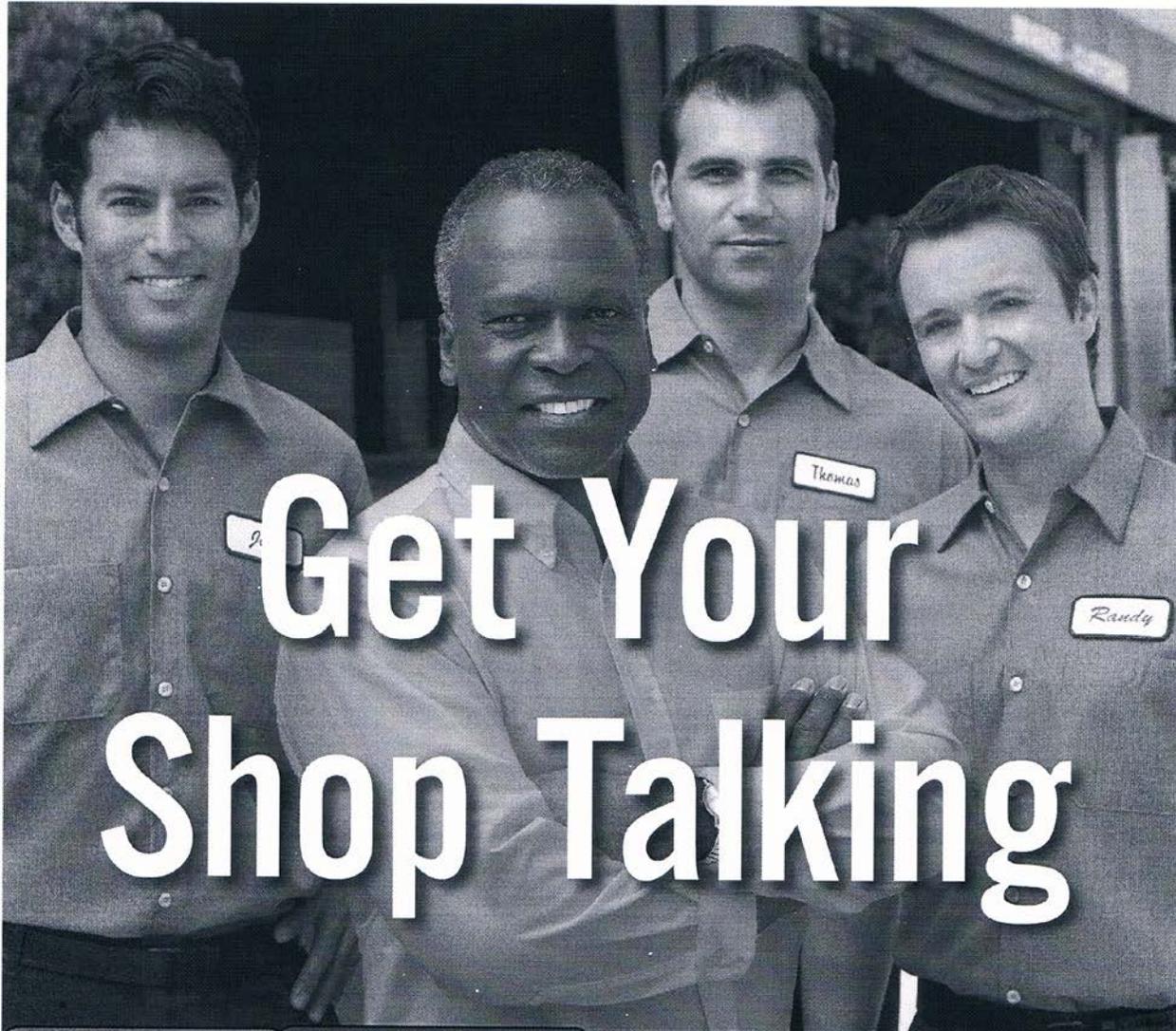
- Five billable hours of legal services for representation and defense at Department of Motor Vehicles or any other New York state Administrative Proceeding or Hearing for repair-shop related issues, and in Small Claims Court, if your business is sued. The Plan does not include representation in any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



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Mitchell 1 TeamWorks combines the features of Manager, Estimator and Repair to seamlessly integrate all parts of your shop. From the moment your customer walks in the door, TeamWorks allows your Service Advisor to look up customer and vehicle information, calculate time to diagnose, check TSBs and prepare an estimate. Parts advisors order and track parts from your favorite vendors. Techs pull up work requested with associated diagnostic and service information, and enter recommended service. That's the kind of shop talk you can turn into profit!



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Mitchell1
Shop Management Solutions

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Keep Your Customers Coming Back

Repair Information Services

Shop Management Solutions

Business Performance Services

Business Intelligence Services

Mitchell1[®] eCRM[™]

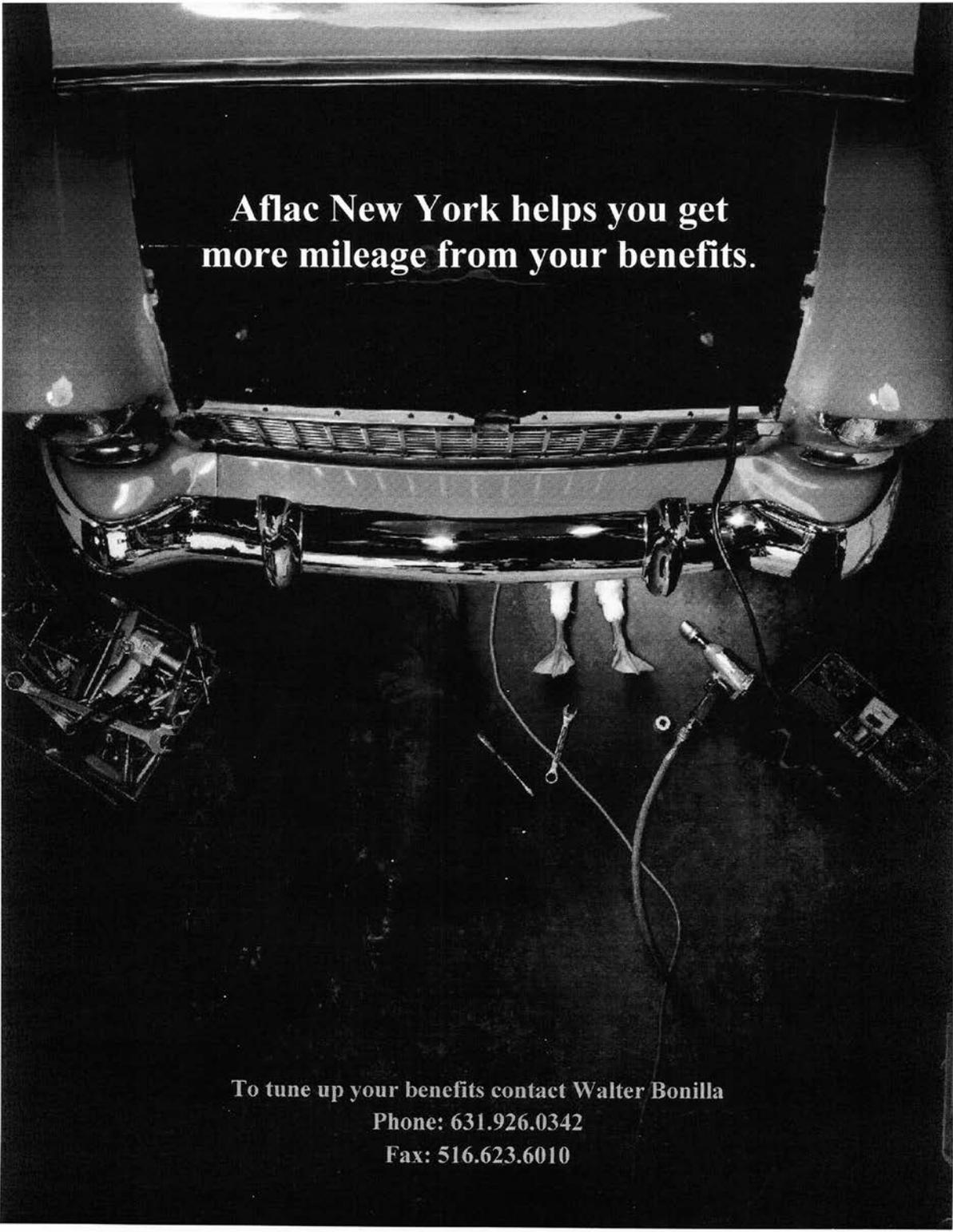
Now you can turn customers into loyal, profitable repeat customers easily. Mitchell 1 CRM integrates seamlessly with your shop management system to track your customers' vehicle history and send timely scheduled service reminder postcards and e-mails automatically. You choose the postcards and customize with your logo and message – finally, a way to communicate your message to your customers that they'll be glad to receive.

- Service Reminder E-mails & Postcards
- Consumer Vehicle History Website
- Service Recommendations
- Custom Promotions
- Dedicated Marketing Support Center
- Return on Investment Reporting



800.410.0529
mitchell1.com/eCRM

Mitchell1[®]
Business Performance Services



**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

FOR LEASE

**GAS STATION AND C-STORE
611 SOUTH ST., UTICA, NY**

C-Store only 2 years old

**Gasoline Sales:
Estimated 600,000 gals**

**CStore: \$40,000 per month
not including lottery**

**Lottery: Approximately
\$25,000 per month.**

**FOR FURTHER INFO
CALL JOE
315-794-4656**