GRANY

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Nation's First Soda Tax Passes in Berkeley, California

On Tuesday, Berkeley, California, became the first U.S. city to pass a measure taxing soft drinks and other beverages with added sugar. The measure will impose a one-cent-per-ounce tax on non-diet sodas, energy drinks, iced teas and juices with added sugar.

The measure, which needed a simple majority to pass, got a whopping 75% approval from the city's famously liberal-minded voters. However, across the bay in San Francisco, a similar ballot measure proposing a two-cent-per-ounce tax on sweetened drinks failed to win the two-thirds support required (54.5% of voters voted for the measure).

A number of states and cities have launched efforts to impose taxes or implement other policies intended to reduce consumption of sugary beverages, but until now, all have been defeated.

In July, U.S. Representative Rosa DeLauro (a Connecticut Democrat who was re-elected on Tuesday) introduced the Sweet Act, which would impose a one-cent federal tax per teaspoon of sugar in soft drinks. DeLauro asserts that such a tax would both reduce drink consumption and raise nearly $10 billion a year that could be used for health programs.

Inside This Issue

OPIS Survey: Demand Drops Even as Prices Fall

An exclusive OPIS survey of close to 5,000 retail stations throughout the U.S. hows that gasoline demand is down in all the timing categories of the survey.

Gasoline demand for the week ending Oct. 25 shows that total gasoline volumes were off by 0.52% compared to the week prior. The prevailing notion is that falling retail prices could goose demand higher, but that has yet to materialize in the figures. Of the close to 5,000 stations participating in the survey, the split was almost even, with 51% reporting a decline in demand.

The month-to-month and year-on-year comparisons show much larger demand declines. The month-to-month comparisons show that gasoline demand was off by 2.34%, with roughly 59% of the stations participating saying that gasoline demand is down compared to a month ago.

Year-on-year gasoline demand comparisons shows that current demand is closing in on 3% below the same time a year ago, with roughly 60% of the stations in the survey saying that demand is off. Meanwhile, of the stations that were reporting lower demand, just over 46% of them said that volume declines were 5% or more.

The rolling four-week average also sees a decline. The current four-week volumes represents a 2.6% decline from last year.

For more information on volume analysis by state, please contact Brian Norris at 301-287-2413.
--Denton Cinquegrana, dcinquegrana@opisnet.com

Proposed Legislation Benefiting Businesses Vetoed by Syracuse, Mayor

Written by Stacey Phillips

A recent decision by the Syracuse, NY mayor regarding proposed legislation for the payment of delinquent city taxes will affect local body shops and other businesses in the area. The legislation, sponsored by Syracuse Common Councilor Kathleen Joy, would have allowed any property owner who is facing foreclosure due to back taxes, a long-term repayment plan called a tax trust. In April, Syracuse Mayor Stephanie Miner changed city policy to allow tax trusts for only owner-occupied residential properties.

Two days after a public hearing on the subject, the mayor vetoed Joy's proposed legislation on September 25. "The administration's policy to limit tax trusts is already working, and changing it is a mistake," Miner said in a news release.

According to the release, earlier this year the Miner administration discovered landlords were asking Councilors to hold votes foreclosing on their tax delinquent properties to

give them time to flip the properties to obtain more favorable repayment terms. This is the reason Miner said the tax trusts were limited exclusively to homeowners.

Joy said the mayor's policy is "discriminatory" and if any person or business meets the criteria they should be entitled to a tax trust. "It will be a dramatic decision against small businesses," she said.

"Businesses like auto repair and auto body shops, they're probably somewhat vulnerable to market demand, weather conditions, and if they get behind in their taxes through no fault of their own, they should have the ability to pay back their taxes," said Joy. "We should have the ability to work with them to keep them open."

By participating in a tax trust, property owners have to come up with the current year's tax, a 10 percent down payment and then are charged 12 percent interest over the time they are delinquent up to five years. "It's not a gift by any means," said Joy. "It's a last resort for property owners who want to keep their property."

One of these is Sam Vigliotti, the owner of Sam's Auto Body & Service Center. Vigliotti, who owns four shops in the Syracuse area, has operated his business for nearly 50 years. According to a recent article written by Tim Knauss, a reporter for The Post-Standard and syracuse.com, Vigliotti tried to resolve a $40,000 delinquent tax bill by entering into a tax trust for one of his shops.

In his article, Knauss wrote that city officials will not grant Vigliotti a tax trust due to the mayor's new policy. "We were greatly affected by the economy, and I had a partnership break up. There are a lot of different circumstances for different people," Vigliotti was quoted as saying in the article, adding that sometimes business owners need tax trusts to overcome setbacks.

Joy needs six out of nine votes on the common council, which is the legislative branch of city government, to override the mayor's veto. She already has five. As the chairperson of finance, taxation & assessment, part of her job is to get tax revenues into city coffers to make infrastructure improvements. "Of course we want as many tax dollars as possible," said Joy, who estimated that the City of Syracuse is $12 million in debt. "I calculate that this maneuver on the mayor's part will short the city by $400,000."

Knauss wrote in his article that approximately 75 percent of tax trusts go into default, according to city officials. In response, Joy said that even if this number is accurate, the business owners have already paid the current year's taxes, 10 percent down and 12 percent on a monthly basis until they became delinquent. "I'd rather take that money and give them a chance, then writing them off from the outset," she said.

Also, she said there's quite an incentive for business owners to pay those taxes on time, to keep the tax trust current and not be in default.

"Sometimes people get into financial circumstances that are beyond their control," said Joy. "Rather than wrestle away a commercial property from someone let's work with them and get the money in. It's a win-win situation from my perspective."

Mayor Miner's office declined to comment when asked by Autobody News how the recent veto will affect local businesses.

When Autobody News went to print, Joy did not have enough votes to override the mayor's veto. She said that she hopes to revisit the idea of tax trusts with an alternative that both addresses the mayor's concerns about absentee landlords flipping their properties while allowing businesses and other owners to pay their back taxes.

Gulf Oil Expands National Field Sales Staff

Gulf Oil just added two marketing veterans to its staff in an effort to maintain and perhaps even hasten growth in its four-year-old national expansion initiative for the brand. The two new field managers will focus on the South and Midwest regions.

Coming aboard with a goal of expanding in southern states is longtime market executive Chris Gannon. He'll focus on business and expansion efforts across the states of Florida, Alabama, Arkansas and Missouri. Over the last 15-plus years, Gannon has worked for brands such as Getty, Apache Oil and Lukoil and was responsible for the latest move by Gulf in branding up Alabama marketer Bumpers Oil Co.

The Midwest expansion will be headed up by Careyann Robleski-Chmelik. She most recently worked with the Capra Consulting Group with a focus on technology, payment and loyalty solutions, but prior to that period managed business development and accounts for Clark Brands.

Earlier this month, Gulf announced it was returning to parts of Alabama for the first time in two decades, having entered a branded supply agreement with Bumpers Oil.
Bumpers Oil, a family-owned and operated company based in Jackson, Ala., has already converted three gas stations to Gulf – two in Jackson and one in Grove Hill. The company intends to convert six more stations in the months ahead. The distributorship owns four gas stations and distributes fuel to 30 more.

"We turned to Gulf because it is a brand with a trusted history and great reputation," said owner Chris Bumpers. Rick Dery, Gulf Oil's senior vice president and chief sales and marketing officer, said Bumpers Oil is significant to Gulf's continued national expansion and return to areas of Alabama.

"Since Gulf Oil began our national expansion efforts in 2010, when we acquired all rights to the Gulf brand in the U.S., we have seen incredible results," said Dery. He noted that Gulf grew its portfolio from about 1,700 Gulf stations in 11 states to a network that now has over 2,500 branded stations across 30 states with hundreds of dealers and distributors. In the last couple of years alone, Gulf has expanded branded fuel in Missouri, Ohio, Texas and Arkansas and unbranded sales in Florida, Tennessee, Alabama, Georgia, South Carolina, Virginia and Tennessee.

In January, Gulf entered the commercial and industrial fuel supply business offering diesel and gasoline to fleets. The company also distributes heating oil, diesel fuel, jet fuel and kerosene through its terminal network. It launched Gulf Electricity in January 2012, providing discounted electricity service to consumers and small businesses in Connecticut, Maine, New Hampshire, New York, Massachusetts and Rhode Island.

Gulf remains one of the Northeast's largest wholesalers of refined petroleum products. Said Dery: "We're not stopping there."

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Cumberland Farms Eyes Strategic Options

For the second time in the last seven years, the owners of Gulf Oil have retained a prominent investment bank to look at a variety of strategic options for the company.

A letter from Cumberland Farms CEO Ari Haseotes went out to hundreds of Gulf employees the first weekend in October. It alerted staff that the owners had retained investment bank Evercore Partners for various wholesale and distribution properties that mostly fall under the aegis of Gulf LP.

While the options could include doing nothing, selling all or a portion of Gulf assets, or creating a master limited partnership (MLP), Cumberland could be contemplating forming a publicly traded entity. Evercore Partners is most notable as one of the companies that advised on the mega-sized General Motors initial public offering (IPO) in 2010.
Industry analysts recently told Oil Express there is room in the market for more publicly held MLPs.

In 2007, Cumberland Gulf retained Morgan Stanley to look at similar options, but shareholders ultimately decided in 2008 to retain the structure which has survived until now. The pullback then might have been inspired by the financial crisis, which put a lid on M&A activity across the business world. Today's environment is starkly different and high-priced deals for logistics and retail supply contracts are motivating many privately owned companies to explore sales or other deals that can hasten growth.
The climate for IPOs is also favorable. Earlier in October, CohnReznick LLP, a top 10 accounting, tax and advisory firm serving middle-market companies, released a study concluding the United States is heading for its highest IPO activity since the year 2000. CohnReznick anticipates IPO activity for all industries will exceed 315 deals in 2014.

Gulf Oil president and chief operating officer Ron Sabia confirmed with Oil Express that Evercore Partners had been retained. But he stressed that it was "very early" in the process with no particular route under consideration yet. He added that ongoing supply and operations would be unaffected by the move, and indeed, the company hired two new regional branded sales executives in recent weeks.

Gulf has expanded steadily in the last decade despite a complicated private ownership structure that includes nearly 40 shareholders. The company grew from a portfolio of about 1,700 stations in 11 states to a branded supply network of over 2,500 sites in 30 states with hundreds of dealers and distributors. Gulf also owns a transportation fleet of nearly 200 trucks and operates 12 petroleum terminals in the Northeast.

Sources say that there have been numerous occasions in recent years where public MLPs have approached the company about buying terminals. The waterborne terminals in Maine, Massachusetts and Connecticut are particularly attractive to MLPs. In addition to those large facilities, Gulf owns seven Pennsylvania terminals as well as two New Jersey locations with access to the Colonial Pipeline.

Gulf also is a historical shipper on that and other pipelines, but it's not known whether coveted line space might be part of any future action. The company also has a very profitable unbranded business at dozens of proprietary and third-party terminals and is an active East Coast trader and blender.

Sources assume that Gulf's downstream jobber and dealer business might be actively pursued by a number of public companies looking to aggressively grow in the MLP space. Energy Transfer Partners (ETP) has added to its distribution and retail holdings and altered traditional valuations in that ownstream space, as has Lehigh Gas Partners and its parent CST Holdings. Not part of any future sale, joint venture or public offering would be proprietary stores owned by Cumberland Farms. Capital generated by a sale or public offering could fund further growth for the successful private chain, however.Gulf jobbers and dealers might not be sad to see a relationship with Cumberland end, since aggressive retail pricing by the chain has long been a sore spot with marketers.

ExxonMobil's Q3 Overseas Downstream Earnings Outgains U.S.

ExxonMobil said on Friday that its third quarter overall downstream earnings are boosted by stronger margin, but the overseas gains are stronger than the U.S.

The company's downstream earnings outperformed its upstream segment, which saw a year-on-year earnings drop.

Downstream earnings were $1,024 million, up $432 million from the third quarter of 2013. Stronger margins, primarily refining, increased earnings by $820 million.

Volume and mix effects increased earnings by $100 million. All other items, primarily foreign exchange impacts, decreased earnings by $490 million.

Petroleum product sales of 5.999 million b/d were 32,000 b/d lower than last year's third quarter.

Earnings from the U.S. Downstream were $460 million, up $145 million from the third quarter of 2013. Non-U.S. Downstream earnings of $564 million were $287 million higher than last year.

For the first nine months of this year, ExxonMobil's Downstream earnings were $2.548 billion, an increase of $15 million from 2013. Lower margins, mainly refining, decreased earnings by $280 million.

Volume and mix effects increased earnings by $460 million. All other items, primarily unfavorable foreign exchange and tax impacts, partially offset by lower operating expenses, decreased earnings by $160 million. Petroleum product sales of 5.886 b/d increased 35,000 b/d from 2013.

U.S. Downstream earnings were $1.619 billion, up $17 million from 2013.Non-U.S. Downstream earnings were $929 million, a decrease of $2 million from the prior year.

Meanwhile, the oil major's total earnings, including both downstream and upstream, rose by $200 million or 3% from a year ago to $8.070 billion.

Upstream earnings were $6,416 million in the third quarter of 2014, down $297 million from the third quarter of 2013. Lower realizations decreased earnings by $670 million. Favorable volume mix effects increased earnings by $340 million. All other items increased earnings by $30 million.

--Edgar Ang, eang@opisnet.com

Company Spends $404,000 Lobbying to House Fuel

The company that will house fuel for New York's emergency reserve program has spent $404,500 lobbying state officials since 2009, public records show.

On Wednesday, Governor Andrew Cuomo announced that the firm, Buckeye Partners, will hold 2.5 million gallons of upstate's gasoline and diesel fuel reserves at six locations across the state, under a new Fuel NY program. The program is designed to prepare New York for disasters like Hurricane Sandy.

State officials would not say how much Buckeye will earn from the NY Fuel program. A Buckeye spokesman did not return calls seeking comment.

Texas-based Buckeye is responsible for a large share of the crude oil that is transported through New York every day by rail.

According to public records, the firm began lobbying state officials in 2009, when it first sought to establish a terminal at the Port of Albany to handle tens of millions of gallons of crude oil from North Dakota's Bakken shale. State officials subsequently granted Buckeye a permit to transport a billion gallons of crude through Albany each year. The company, along with competitor Global Partners, has been instrumental in turning Albany, and the Hudson River, into one of the nation's largest hubs for Bakken crude.

After the fuel reserve program was announced on Wednesday, Buckeye chairman and C.E.O. Clark C. Smith said was he “pleased to be partnering with the state of New York to provide a strategic refined petroleum products reserve for the Upstate New York markets.”

The company did not return phone calls seeking comment on Thursday.

Buckeye has largely escaped the public attention Global has received.

Buckeye recently completed work on a refinery in New Jersey that will allow it to bring in heavy oil sands crude from western Canada. It has not informed New York officials that it intends to use New York rail lines to transport heavy crude, which sinks in water and would be nearly impossible to clean from the Hudson River if it spilled.

After public outcry arose over a crude-heating facility proposed for the Port of Albany by Global, state officials said they would review all of the company's permits. It is not reviewing Buckeye's to transport oil through New York.

Proposal to Replenish the Highway Trust Fund

Without Congressional action, the Highway Trust Fund will run out of money by the end of May next year. Will Congress pass a short-term bill, or will they fund the infrastructure at a level deemed necessary to sustain the system for the foreseeable future? Let's look at the range of options being considered.

Option #1

Raise the fuel tax by $2 a gallon. This would be the easiest option to administer, and would be supported by environmentalists. It would be opposed by most in the auto and truck industries. This option would not require any changes to nonfuel taxes.

Option #2

Raise the fuel tax by 50 cents a gallon, reinstate the Federal Excise Tax (FET) on passenger tires and retread rubber (5

Option #3

Raise the fuel tax by 15 cents per gallon, reinstate FET on passenger tires and retread rubber (5-15 cents a pound), and increase existing nonfuel taxes by 10% (including heavy tires).

Option #4

Consider:

1. Increased tolling
2. Congestion fees
3. Vehicle Miles Traveled (VMT) charges
4. National Weight-Distance Tax on Truckers
5. Increase private sector investment (i.e. privatization of highways)
6. National Infrastructure Bank
7. Sales tax on oil producers at the wholesale level

Today, revenues from the excise tax on tires provide less than 2% of the Highway Trust Fund receipts.

In December, legislation was introduced to raise the Federal gas tax by 15 cents a gallon. Industry groups like the U.S. Chamber of Commerce, ATA, and AAA made headlines by coming out in support of the proposal. Our National Association held strong in its position.

We are taking 2 strong positions:

1. Eliminate diversion. We are approaching 30% of the funds collected for the Highway Trust Fund diverted for non-highway purposes.
2. Engage creatively in future highway funding. We were an early supporter of legislation introduced by Congressman John Delany (D-MD) "The Partnership to Build America Act" (H.R. 2084)

The Partnership to Build America Act is a bipartisan effort to find new funding for roads, bridges, and transit. The Act finances $750 billion in infrastructure investment using no appropriated funds and has 50 co-sponsors (25 Republicans and 25 Democrats). On January 27, 2014, two Senators - a Republican and a Democrat, introduced a companion bill. Within a week, 5 Republican Senators and 3 Democratic Senators came out in support of the bill.

The problem is how to fund transportation and how to entice U.S. corporations, which have stashed an estimated $1.45 trillion abroad, to bring that money home. One plan is to create a $50 billion federal fund to bankroll loans and leverage private investment for transportation and other infrastructure. The money would come from bonds bought by companies who want a tax break if they bring cash earned abroad back to the U.S.

General Counsel Corner

The Franchise IndustryReceives a Jolt

By Peter H. Gunst , Esquire

Over four years ago, in August 2010, the Superior Court of the District of Columbia decided in Kazemzadeh v. Eastern Petroleum Corp. that a supplier could not, by contract, completely restrict a dealer from obtaining product from alternative suppliers.

This was so because the District of Columbia Code provided that marketing agreements could go no further than to require that motor fuels resold to the public by a dealer "be of a reasonably similar quality" to the supplier's product, and that the dealer not misrepresent the product's source. D.C. Code §36-303.01(a)(6) and (11).

The Superior Court's decision was not subject to appellate review because the defendant, Eastern Petroleum Corporation, went out of business and the lawsuit was dismissed by the parties' agreement. Thus, the issue remained unresolved.

In August 2013, the Attorney General for the District of Columbia again raised the issue of the effect of the District's open supply law in an action brought against ExxonMobil and distributor Joe Mamo's marketing entities, styled District of Columbia v. ExxonMobil Oil Corporation.

In his lawsuit, the Attorney General complained that Mr. Mamo's companies dominate the District of Columbia market as "the exclusive gasoline suppliers for about 60% of the approximately 107 retail gasoline stations" located in the District.

The Attorney General claimed further that Mr. Mamo's imposition of exclusive supply requirements on independently operated service stations had the effect of stabilizing the wholesale gasoline price charged for Exxon branded gasoline in the District, and thus deprived District residents "of the benefits of competition in the wholesale supply of Exxon-branded gasoline."

In May of this year, the Attorney General's suit was derailed by Judge Craig Iscoe, the Superior Court Judge overseeing the litigation. In a detailed 24-page opinion, Judge Iscoe held that, although the District of Columbia statute permitted service station dealers to pursue an unfair business claim for the statute's violation, it did not give either the Mayor or the Attorney General standing to sue.

In reaching that conclusion, Judge Iscoe first emphasized that the District's Retail Service Station Act ("RSSA") on its face provided the Mayor with authority to enforce certain of the RSSA's provisions, but not its open supply provision. The failure to provide the Mayor authority to enforce the open supply provision was not, according to the court, "a mere oversight."

The Attorney General argued for the right to pursue an implied right of action because of the Mayor's "broad authority to enforce statutory regulations in the 18222.001/117580 District." Rejecting that argument, Judge Iscoe found that the "legislative history of the RSSA clearly shows that the D.C. Council consciously chose not to grant the Attorney General or the Mayor" the ability to enforce the open supply provision.

Finally, Judge Iscoe rejected the Attorney General's claim to parens patriae standing to pursue any claim asserting injury to the District's "quasisovereign interest." In order to pursue such a claim, the Mayor had to identify an injury to the District that was "sufficiently concrete" and effected "a substantial segment of its population."

According to Judge Iscoe, this test had not been satisfied. Finding the Attorney General's allegations to be "conclusory and unsupported by any factual allegations," Judge Iscoe wrote: The Complaint does not allege that the price of ExxonMobil's fuel is too high at service stations, it does not allege that there is another dealer who would want to purchase fuel from a third party supplier, and it does not allege that there exists a third-party supplier, which would sign contracts with retail dealers for lower prices.

But this may not end the open supply saga. A bill has been presented to the District of Columbia Council that, among other things, would amend the RSSA to permit the Attorney General "to maintain an action or actions in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any person from, directly or indirectly, making, renewing, or enforcing a market agreement provision, term or condition in violation of" the RSSA.

Should this legislation fail, and the Attorney General not successfully appeal Judge Iscoe's opinion, the only remaining path to enforce the District's open supply law would be through litigation pursued by the effected dealers themselves.

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 driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 518-452-4367.

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Covered services available to members include:

- Defense in Small Claims Court if your business is sued or at Department of Motor Vehicles or at any other New York State Administrative Proceeding hearing. (Once per year.)

- Review of leases, supply contracts and franchise agreements to advise you of your obligation under these contracts. The plan does not include actual negotiation on your behalf. (One hour per issue, up to five hours per year.)

- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

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Additional legal services will be provided by the designated law firm's standard hourly rate less 15%. Special contract prices have also been negotiated for the following services.

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