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

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6 WALKER WAY, ALBANY, NY 12205

February 2014

(518) 452-1979 -- (716) 656-1035 – state@nysassrs.com – www.nysassrs.com

## **NLRB Poster Rule Is Dead**

Over two years ago, the National Labor Relations Board (NLRB) issued a final rule that would have required all private employers subject to the National Labor Relations Act to display a poster about employees' rights under the Act. SESCO reports that the NLRB announced on January 6, 2014 that it would not seek Supreme Court review of two Circuit Court of Appeals decisions invalidating the agency's Notice Posting Rule. The NLRB had until Thursday, January 2, to appeal the cases to the Supreme Court, but allowed the deadline to pass.

Initially, this posting rule was met with much resistance from employers, in part because of its controversial content that some believed was pro-union as the poster failed to mention employees' rights to decertify a union, not to pay union dues in right-to-work states and to object to dues unrelated to representation. The proposed regulation was quickly challenged in court.

As a result of these legal challenges, two federal Courts of Appeals (the Fourth Circuit and the District of Columbia) held that the NLRB's poster rule was impermissible. One court (the Court of Appeals for the District of Columbia)

found that the rule violated employers' free speech rights under the First Amendment, and the other (the Court of Appeals for the Fourth Circuit) found that the NLRB did not have the authority under the Act to issue the rule.

The NLRB poster remains available on the agency website and it may be viewed, displayed and disseminated voluntarily. However, businesses that have already displayed this controversial poster have been free to remove it as a result of the legal appeals...and now permanently.

## **WOTC**

The Senate agreed on January 7 to take up the bill to extend unemployment benefits by a vote of 60-37. Senator Rob Portman of Ohio was the last of five Republicans to join with Democrats to reach 60 votes required to limit debate on the motion to take up the bill, S. 1845.

The vote was critical—if five Republicans continue to hold with Democrats on the next motion to limit debate on final passage of the bill, S.1845 should pass the Senate. The bill would then go to the House, where the Speaker has already said its cost must be offset by spending cuts. The Senate having failed to provide an offset, the House Republican majority is set to provide one and send the bill back to the Senate, take it or leave it.

The question is whether any House offset is realistic or calculated to score political points—the offset proposed today by Senate Republicans was to gut Obamacare, which is a non-starter for Democrats. We describe all this because it could become the scenario for passage of the tax extenders bill, S.1859.

It appears the extenders might not be taken up until after January 15th because House and Senate must now turn their attention to passing the all-important Omnibus Appropriations bill to fund the government for the remainder of the fiscal year. That bill must be passed before midnight on January 15th or the government shuts down.

At this moment, House and Senate appropriators have still not reached final agreement on an omnibus bill, even though they've been working since the Ryan-Murray budget deal last month. The thorn as usual is Obamacare. If they continue negotiating till the last minute on January 15th there may be a few days of floor time available for Senator Reid bring up the tax extenders bill, but his agenda is uncertain because the White House is pressing to bring up a jobs bill and minimum wage bill as well. Senate Democrats are meeting as we write, so their agenda may become clearer.

When Senator Reid takes up the tax extenders bill, our hurdle for passage will be higher because the bill will cost

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more and a few Democrats running close races in red states may not vote for what they perceive as adding to the deficit. This means to have a realistic chance, our goal should be to get at least ten Republican senators to vote for the bill in the Senate.

In the House we must win Speaker Boehner's support and Congressman Ryan's support (Ryan is on the way to taking over Ways and Means next year; the present chairman, Congressman Dave Camp, has made clear he will initiate nothing for the extenders except via tax reform, but will produce a bill if the Speaker directs him to).

We must get House Republican congressmen and women to commit to talking to these two people, Boehner and Ryan, and urge them to bring a bill reauthorizing WOTC because it creates private sector jobs, is proven cost-effective and free from fraud and abuse, doesn't add to the deficit, and is vital to a million jobs for young people, veterans, people with disabilities, and others with the highest unemployment rates in the nation.

We cannot stress enough that our campaign for WOTC renewal must continue without pause! Much is at stake in these next couple of months, because if we fail to win an extension, its likely WOTC will remain expired until after the election, or even, as we have warned, until the middle of 2015!

Now is the time to act—the task is clear—SSDA-AT will lobby Republican senators and congressmen to work for renewal of WOTC—they are the people in Congress who can make or break our efforts to pass a retroactive WOTC extension. Write these senators and congressmen, call their offices and make your case to their legislative assistants, find out when your senators and congressmen will be next in the state or district and ask for a face-to-face meeting, at your meetings arrange to bring along representatives of your Chamber of Commerce, state retail, restaurant, or hotel and motel, etc, association, and don't forget to include local people working to help disadvantaged youth, veterans, or people with disabilities get jobs.

Remember, in early December we were told by the Senate Finance Committee that extending WOTC was out of the question, there would be no extenders bill because it would detract, in their opinion, from tax reform. We refused to accept that decision and within three weeks, by the time the Senate adjourned, the Majority Leader had written and introduced an extenders bill and had it ready for a floor vote. This resulted from a team effort—we need the same effort now.

### **Immigration Reform Faces Uphill Climb**

It's anyone's guess whether the House and Senate can agree on an immigration reform bill this year, but, if they do, the good news for family businesses is that guest worker provisions will allow farmers to harvest their crops, if wage requirements are met. More highly skilled workers would get H1-B visas. The bad news is that 11 million out of status immigrants may get a pathway to citizenship and that there would be no guarantee that the funding to secure the border

would be forthcoming. In a historic vote on June 27th, the Senate passed S.744 by 68-32. It would establish a pathway to citizenship for 11 million illegal immigrants and would seal off our border with Mexico by doubling the number of Border Patrol agents to 38,000 and by finishing 700 miles of fence through Texas. ? ? The bill now goes to the House where it faces an uncertain fate. House Speaker John Boehner (R-OH) has repeatedly vowed not to bring any bill to the floor without majority Republican support, which S.744 does not enjoy. However, Boehner has also privately urged his colleagues to pass immigration reform or else to be prepared for further electoral disappointment. Although a bipartisan group of House members is fashioning a compromise bill, it's unlikely to reach the House floor. As House Judiciary Chair Bob Goodlatte (R-VA) noted in this statement, his committee has passed several piecemeal immigration reform bills. If any one of them were to pass the House, Boehner could move to appoint conferees. That would allow a compromise bill to emerge from the conference committee, which could pass Congress. Boehner has called a House Republican Caucus meeting behind closed doors on July 10th to discuss how to proceed. House Republican leaders are mulling passage of limited immigration reforms in May or June. House Speaker John Boehner (R-OH) has repeatedly vowed not to bring any bill to the floor without majority Republican support, which S.744 does not enjoy. However, Boehner has also privately urged his colleagues to pass immigration reform or else to be prepared for further electoral disappointment. A bipartisan "Gang of Eight" House members worked hard in 2013 to produce a comprehensive immigration reform bill, but three Republicans bolted the group, leaving only one, Rep. Mario Diaz-Balart (R-FL), in what is now the "Gang of Five," with little prospect for producing a bill that could attract a majority of House Republicans. Meanwhile, the House Judiciary and Homeland Security Committees passed several piecemeal bills covering border security, H.R.1417, state and local enforcement, H.R.2278, employment verification, H.R.1772, agricultural guest workers, H.R.1773, and high-tech worker visas, an increase from the current 65,000 to 155,000, H.R.2131, but Senate Democratic leaders refused to take up these bills, insisting on a comprehensive immigration bill. It's unclear if this impasse will be resolved this year.

### **Ethanol Renewable Fuel Mandate Lowered**

In late November, the Environmental Protection Agency proposed to lower the amount of ethanol that must be blended into U.S. gasoline from the over 14 million gallons set in the 2007 law to between 12.7 million and 13.2 million to avoid the 10% "blend wall." The rule will probably be finalized next spring after a 60-day comment period. More starting on p. 67 of its 89-page EPA ruling of August 6, 2013. The oil industry is demanding complete repeal of the renewable fuel standard as unworkable and unnecessary now that gasoline consumption has leveled off and natural gas production has soared.

### **Stewart's Shops Faces Class-Action Lawsuit Over Wages**

Stewart's Shops is facing a class-action lawsuit alleging violations of state and federal wage and hour laws.

The lawsuit, filed Jan. 9 in U.S. District Court for the Northern District of New York in Albany, alleges that Stewart's Shops failed to compensate employees for all hours worked. Specifically, it alleges that employees were routinely required to perform work before and after their scheduled shifts yet were not paid for such time, according to a news release.

The class-action lawsuit also alleges that the Saratoga Springs-based retailer routinely deprived employees of mandatory meal breaks; failed to implement an accurate and effective method to record time worked by employees; failed to provide employees with mandatory disclosures concerning their rate of pay; and failed to pay for the cost to launder and maintain required uniforms.

The lawsuit seeks class-action status on behalf of 4,500 current and former Stewart's Shops employees throughout New York and Vermont.

The case is being prosecuted by Ryan M. Finn, Esq. of Hacker Murphy LLP, an Albany-based litigation firm.

Stewart's Shops operates 330 convenience stores in upstate New York and southern Vermont.

### **Hess Officially Sheds Gasoline Stations**

Hess Corp. has moved forward with its decision announced last year to sell its U.S. convenience stores and gasoline stations, Bloomberg Business Week reports. The separation will be tax-free.

Hess will continue to look for a buyer of its stores that run from Florida to New Hampshire while it spins off the unit, which will likely happen in 2014, said spokesman Dennis Moynihan. Hess also said in 2013 that it would be shuttering or selling its refineries to concentrate on producing oil.

"I, for one, am in favor of a spin because it will keep the Hess brand name which has some value and the company won't pay any taxes," said analyst Fadel Gheit with Oppenheimer & Co. Gheit said the business could be worth \$2 billion.

Hess branded convenience stores and gasoline stations include Wilco Travel Plaza, Hess and Hess Express, with a total of 1,258 outlets. The company also is the biggest Dunkin' Donuts franchisee by number of outlets. Rumors of companies interested in buying the Hess retail stores include Alimentation Couche-Tard Inc.

The move to sell its retail locations is not new in the oil business. Marathon Oil Corp. and ConocoPhillips jettisoned their gasoline stations when they split up refining from oil production.

### **N.Y. C-stores See Little Benefit From Tribal Tax Change**

It's been more than two years since the courts gave New York State the go-ahead to collect an excise tax on national brand cigarettes sold on Native American reservations in the

state. The move should have been a win for competing convenience stores, which had been at a price disadvantage due to the state's \$4.35-per-pack levy. The reality, though, is that c-stores across the Empire State are still suffering the effects of having the highest state cigarette excise tax in the country.

Jim Calvin, president of the New York Association of Convenience Stores (NYACS), told CSNews Online that Gov. Andrew Cuomo's administration won its legal challenge to collect taxes on national brand cigarettes that are shipped through the conventional chain of supply -- manufacturer to licensed wholesale distributor to retail stores. However, after the ruling, the Native American tribes instead decided to stop selling national brands and no longer accept delivery of brands such as Marlboro, Camel and Newport through those traditional channels.

"In the three to six months following the start of enforcement, national brand product in tribal stores in New York started drying up and by the end of about six months, the national product was virtually gone from the shelves in tribal stores," Calvin explained. "That led to a significant increase in sales of national brand cigarettes in the non-tribal stores in closest proximity to those tribal enterprises. But the significant increase didn't last long. The sales quickly flattened out and, in some cases, began to drop again."

Part of the problem, according to Calvin, is that cigarettes manufactured by the Native American tribes are still not subject to the state levy. Some tribes were already making their own brands and those that weren't began to do so. "They simply substituted their own brand for [the] national brands they had been carrying up to that point. Their tobacco business continued to flourish," Calvin said.

New York convenience store retailer NOCO Inc. saw "a minor blip up" in cigarette sales at the company's NOCO Express stores immediately following enforcement, but that uptick soon died down.

"A lot of the tribes were able to use the money they had saved on the taxes to build their own brands," explained Mike Newman, executive vice president of NOCO. "What we are finding now [is that] Native American brands that avoid all the taxes are now a big piece, or at least a share of the market. It really just displaced the existing premium smoker to a Native American brand."

While some smokers are loyal to their brands, Native American tribes were able to use things like taste profiles to mirror some of the major brands, Newman added. "Not only were they switching people because of price, but they were offering them a similar taste profile," he said.

In addition to turning to tribal brands, smokers began looking for other options -- think black market and counterfeit cigarettes. "The illegal trade in national brand cigarettes increased sharply and as a result, the stores that initially saw a bump in their sales volume saw the bump disappear and in some cases, resume the decline they had been experiencing" NYACS' Calvin explained.

According to the association head, many New York c-stores are no better off now than they were prior to the start of enforcement. In fact, many retailers and wholesalers

continue to report a significant drop year to year and month to month in their taxable-sales cigarettes.

"The cigarette tax evasion epidemic had already been allowed to get so big. It had become such a pervasive problem that addressing only one part of it only fed another part of it," Calvin told CSNews Online. "There is such a clamor for untaxed or lower-taxed cigarettes in New York State that it is out of control. It is proving almost impossible to put the genie back in the bottle."

### **Department Of Homeland Security Issues Malware Alert**

The Department of Homeland Security's United States Computer Emergency Readiness Team (US-CERT) recently issued a malware-POS alert, TA14-002A, entitled "Malware Targeting Point of Sale Systems." The alert comes less than one month after Target suffered a massive security breach at its point of sale systems over the holiday shopping period.

"For quite some time, cyber criminals have been targeting consumer data entered in POS systems," the alert states. "In some circumstances, criminals attach a physical device to the POS system to collect card data ... In other cases, cyber criminals deliver malware which acquires card data as it passes through a POS system, eventually exfiltrating the desired data back to the criminal."

To thwart such attempts, the alert recommends the following best practices:

- Use Strong Passwords: Change passwords regularly, using unique account names and complex passwords.
- Update POS Software Applications: POS systems are vulnerable to malware attacks when required updates are not downloaded and installed on a timely basis.
- Install a Firewall: Firewalls should be utilized to protect POS systems from outside attacks.
- Use Antivirus: Antivirus programs attempt to restrict malware's access to POS systems.
- Restrict Access to Internet: POS systems should only be utilized online to conduct POS related activities and not for general Internet use.
- Disallow Remote Access: To prevent unauthorized access, disallow remote access to the POS network at all times.

Additional resources for retailers are available through the NACS/PCATS "We Care" program, including the NACS/PCATS We Care Data Security Program Overview that offers solutions for securing POS systems through an 8-point data security plan. By following the 8-point plan, data breaches at retail locations can be greatly reduced.

### **NRF Files Appeal to Overturn Swipe Fee Settlement**

It's official: Retailers are not ready to give up the fight over credit card swipe fees. NRF (formerly The National Retail Federation) is appealing the settlement in a 2005 class-action lawsuit concerning swipe fees, which are also referred to as interchange fees. In a motion filed Thursday, the group of retailers is asking the 2nd U.S. Circuit Court of Appeals to overturn a lower court's ruling.

"NRF is filing the appeal to overturn the flawed credit card swipe fee settlement. The settlement does nothing to reform the price-fixing payments system that has let credit card swipe fees skyrocket over the past decade and nothing to keep them from continuing to soar in the future," said NRF Senior Vice President and General Counsel Mallory Duncan.

"Instead of lowering fees, the card industry's settlement proposes that merchants pass them along to consumers in the form of surcharges. That is absolutely the opposite of what retailers sought, and major retailers have soundly rejected surcharging," she added.

NRF's notice of appeal comes three weeks after U.S. District Judge John Gleeson granted final approval to a \$5.7-billion settlement in the case that saw retailers battling Visa Inc., MasterCard Inc. and other financial institutions over the swipe fees. Despite the ruling, retail organizations such as NRF and NACS, the Association for Convenience & Fuel Retailing voiced objections to the deal.

"There has been no agreement to this settlement by the retail industry. Instead, there's a settlement with nine individual retailers whose views are not representative of the collective industry," Duncan continued. "A majority of the original plaintiffs in the case repudiated the settlement as soon as they saw its terms. The nation's largest retailers have spoken out against it, and close to 8,000 retailers and merchants have formally rejected the proposal. This is an abuse of the class-action system and should never have been approved.

"The only people pleased with this settlement are Visa and MasterCard because it means they can continue collecting tens of billions of dollars in hidden fees; the class-action lawyers who stand to collect half a billion dollars in fees without fixing the problem; and a lower court, which has cleared a time-consuming case off its docket but has done a serious disservice to merchants and the public in the process," she stated.

NRF is a retail trade association that represents discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries.

### **Minimal Labeling Regulations**

Industry represented in Washington plans to support legislation in Congress that would block minimal labeling requirements as they apply to stores who's food offerings mainly consists of packaged foods. Under the rules that FDA proposed to implement part of the Affordable Health Care Act, establishments that have twenty or more locations, where more than 50% of the floor space is dedicated to selling food, must provide additional nutritional information, in writing, upon request. The proposal even covers pre-packed food that already has nutrition information on the package. Our industry will be pushing for bi-partisan legislation that has already been introduced in the House and

Senate that would clearly define a restaurant as a business that derives over 50% of its revenue from prepared foods.

### **Renewable Fuels.**

The Association representing service stations in Washington is trying to get some relief from the Renewable Fuel Standards (RFS). They point out that RFS requires long term reform, including the liability risk that affects retailers and keeping the blending mandate under the maximum level of ethanol blending possible giving motor fuel demand in the US. The representatives believe that there is so much renewable fuel that the market will absorb. EPA is pushing E15 but it is of concern to the industry. E15 is 15% ethanol and blended with motor fuel. EPA supports expanding the use of ethanol. E15 has too many regulatory barriers. The EPA guidelines for storing and dispensing E15 create a problem for the equipment currently in use. Many retailers cannot accommodate these standards.

About 70% of underground storage tank systems and even 40% of new systems that were tested failed to demonstrate compatibility with E15 or a blending of 15% ethanol with gasoline. This has been pointed out to EPA. The tests were performed by the National Renewable Fuels Laboratory and Underwriters Laboratory.

These results, as well as adequate records on underground storage tank systems at gasoline stations, the high cost of upgrading underground storage tanks, the unwillingness of equipment manufacturers to certify compatibility and the potential liability for retailers of E15 could prevent the blends widespread use in the future.

### **Supplemental Nutrition Assistance Program (SNAP)**

There is a legislative battle over funding for Supplemental Nutrition Assistance Program (SNAP) which is formerly known as the Federal Food Stamp Program. The bill includes a push in the Senate to tighten the qualifications for SNAP retailers. These qualifications may make it harder for some C-stores to participate.

It appears that some legislators want to block C-stores from accepting SNAP credit.

The U.S.D.A. is considering prohibiting SNAP participation by retailers who's main business is the sale of food stamp eligible products. These could include retailers with large portions of revenue from the sale of alcohol, tobacco and/or lottery tickets. There is also consideration for implementing stricter food stocking requirements to insure there are sufficient offerings of health foods.

### **N.Y. Gas Stations Make Some Progress on Backup Power Installation**

Downstate New York gasoline stations mandated to have back-up power capability to keep motorists supplied with fuel in the event of an energy emergency were making steady progress as 2013 came to a close.

The state agency administering the Fuel NY grant program to help gasoline stations pay for installation of back-up power capability quantifies compliance at 34% with about three months to go before the deadline for the most strategically located retail outlets.

Twenty-five stations had been wired with a transfer switch to accommodate a generator as of Dec. 24, according to the New York State Energy Research and Development Authority (NYSERDA).

New York state officials have approved the work done at those stations and several more stations are under review, NYSERDA spokesperson Dayle Zatlin told Oil Express. Of those 25 stations approved for transfer switches, four have permanently affixed generators.

NYSERDA has issued grant contracts for the installation of transfer switches to 310 gas stations, "or 34% of the 905 eligible stations," Zatlin said. Approximately 8% of the contracts issued to stations are to install a permanent generator along with a transfer switch, she added.

As of late September, about 250 of the roughly 1,500 stations required to install either a transfer switch or a permanent generator had applied for the state grants, and more than 100 contracts had been issued for work to begin.

Under the Fuel NY program, stations can get grants of up to \$13,000 per station to install a permanent generator or \$10,000 per station for rewiring if owner/operators opt to use portable generators.

Zatlin declined to give the locations of the stations participating in the program as of year-end, saying only that they were either within a half-mile of a highway exit or hurricane evacuation route in New York City, Long Island and Westchester and Rockland counties or are part of a chain further than a half-mile from highway exits and evacuation routes in the specified downstate areas.

The stations located closest to highway exits and evacuation routes face a compliance deadline of April 1, 2014 while the additional gas stations owned by retail chains located further from highway exits and evacuation routes have a deadline of Aug. 1, 2015. Grants to the latter group are also capped at \$10,000 per station.

#### *Process Found Cumbersome*

More than a few New York marketers affected by the requirement "have found the process more cumbersome than they had anticipated," the head of the New York State Association of Service Stations and Repair Shops told Oil Express.

"They have to apply (for the grants) online, then get the document and then supply more information," said Ralph Bombardiere, the group's executive director. When it comes to the step involving licensed electricians, some members thought that stations could pay electricians directly, but that's not the case. "The dealer has to have an electrician come in and then the dealer gets the documents to submit to the state," he said.

Some stations have moved all the way through the process, others are clearly not obligated, but there are others which aren't cognizant of their obligation.

Bombardiere's group has focused its outreach to that "middle, gray area" and believes that participation in the Fuel NY program will probably move faster as the new year gets underway.

A related effort also getting underway in 2014 will be NYSERDA's solicitation of gasoline stations regarding their participation in a pool of portable emergency generators for lease or rent. NYSERDA issued a request for proposal on Oct. 29, 2013 to select a vendor for deployment of the generators.

As for New York's 3-million-gallon strategic gasoline reserve (also announced in late October), NYSERDA is currently in the contracting process with Northville Industries.

--Beth Heinsohn, bheinsohn@opisnet.com  
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### **Start-Up NY To Offer Tax-Free Zones To New And Expanding Businesses**

The new START UP NY program seeks to accelerate entrepreneurialism and job creation in targeted areas across the state, with a particular focus on Upstate New York, through the creation of tax-free areas located on or in the vicinity of college and university campuses. The State University of New York, along with other college communities, will serve as the framework of the START-UP NY program to attract high-tech and other startups, venture capital, new businesses and investments from across the world. Under the program, businesses have the opportunity to operate completely tax free for ten years on eligible campuses and spaces. Businesses will partner with higher education institutions in the SUNY system, as well as other universities and be able to access industry experts and advanced research laboratories

Participating companies will not pay any taxes -- business/corporate, sales or property -- to the state or localities for 10 years. Their employees will pay no state or local taxes on personal income for the first five years. For the next five years, employees will pay no taxes on income up to \$200,000 for individuals, \$250,00 for head of household, and \$300,00 for taxpayers filing a joint return.

In order to be eligible for the START-UP NY program, a business needs to be aligned with or further the academic mission of the college or university sponsoring the tax free area and either be a new start-up company, be from out of state. Or be the expansion of an existing New York company that is creating new jobs and not moving existing jobs. Certain types of businesses are excluded from the program statewide, including retail and wholesale businesses, restaurants and hospitality businesses, professional practices, and energy production and distribution companies. In New York City, Long Island, and Westchester County, businesses must be start-ups or high-tech companies. Businesses that might compete unfairly with other local businesses outside the tax-free area would be ineligible to participate. A business must also create and retain "net new jobs" and meet an annual employment test.

SUNY, CUNY, and independent colleges and universities will all have the opportunity to develop tax-free areas. Every SUNY community college and 4-year school can establish a tax-free area using vacant land on the campus, vacant space in the buildings on the campus, any business incubator with an affiliation to the campus, and up to 200,000 square feet within one mile of a campus or a further distance with approval of Empire State Department. The program also allots 3 million square feet of tax free areas statewide dedicated to private colleges and universities primarily in counties north of Westchester County, which can include vacant-land and vacant space on-or-off campus as well as any business incubator with an affiliation to the institution. Of these 3 million square feet, a potential of 150,000 square feet of space will be available for private colleges and universities located in Westchester County, Long Island, and New York City.

In addition, up to 20 strategic state properties can be designated as Tax-Free Areas. These must be state-owned vacant land, vacant facilities, or facilities that are in the process of being closed by the state and becoming vacant.

START-UP NY formally begins on January 1, 2014 when tax exemptions are official available for participating businesses and their employees. Businesses will be able to apply directly to colleges and universities once the tax free areas are approved, which is expected to occur in December

### **Workers' Comp Reforms To Cut Employers' Costs By \$800 Million**

A series of measures that will reduce the cost to employers under the state's workers' compensation system by 26% annually beginning in 2014 were included in the 2013-2014 state budget

The Business Relief Act enacted as part of the budget cuts the worker's compensation assessment to employers from 18.8 percent to 13.8 percent, the largest reduction since 1998, and also provides a one-time worker's comp assessment savings next year to all self-insured employers.

The changes reduce the cost to operate the worker's compensation system otherwise known as assessments, in two ways. Closing the Re-Opened Case Fund initially will save employers \$300 million annual assessment. In recent years, the cost of the Reopened Case Fund had grown exponentially while failing to serve its originally intended purpose. Closing the fund also reduces the unnecessary litigation in the comp system, another cost savings for employers.

Additionally the Business Relief Act simplifies the antiquated, disjointed and overly complicated system used to calculate employer assessments. Unlike the old system, the new system will charge all employers using the same methodology. As a result, self-insured employers in New York State, including most local governments and school districts, will realize a one time savings in claim reserves of \$500 million.

Along with these cost saving measures, the state has launched two other initiatives this year that will have a long-

lasting positive impact on the system. This summer, New York began implementing the first phase of electronic reporting of injuries, known as eClaims. By March 2014, insurers and third party administrators will submit injury information electronically, instead of on paper – a more efficient and cost effective process.

Finally the Worker's Compensation Board is now beginning a comprehensive project known as "business process re-engineering" to evaluate and re-imagine the state's workers' comp system. This effort will examine the system as it exists today, assess how well it meets its goals, and recreate a system that more effectively serves the needs of injured workers and employers.

### **General Counsel Corner**

By Peter H. Gunst, Esquire

#### *Immigration Alert: The Need to Document Immigrant Employees*

As if service station dealers didn't have enough to worry about, they must now be increasingly concerned about maintaining proper documentation to prove that they are not employing illegal workers. In May of this year, employers were required to use an updated version of the federal I-9 form to prove the eligibility of new workers.

The forms appear simple, with newly hired employees required to complete and sign Section 1 of Form I-9 by their first day of employment, and the employer then completing Section 2, which requires that it attest to examining documents provided by the employee to establish his or her legal employment status and to certify the employee's first day of employment, among other things.

But mistakes can be costly. As one commentator has warned: Mistakes or missing information, whether intentional or not, and which might have nothing to do with a worker being in the country illegally, can lead to stiff penalties. Employers can be fined from \$110 to \$1,100 per violation for failure to comply with the form's requirements, according to U.S. Citizenship and Immigration Services. Penalties can even be steeper, up to \$6,500 per violation, for participating in document fraud, or up to \$16,000 for knowingly hiring an unauthorized worker.

Consider the fate of small Washington state contractor Ketchikan Drywall Services, Inc. ("KDS"). This company had only four permanent employees but also hired numerous temporary employees. Although its problems arose from failure to maintain proper records prior to the release date of the newly amended I-9, the lessons drawn from its predicament are equally applicable now.

When Immigration and Customs Enforcement ("ICE") served an administrative subpoena on KDS, it soon became apparent that KDS's practices in obtaining and maintaining I-9 forms were far from ideal. Failures to comply with ICE regulations resulted in an initial fine of \$286,624, which was reduced to \$173,250 by the administrative judge.

How did this come about?

First, ICE, as was its right, examined Form I-9s going back three years. This expanded the number of violations to 271.

Second, no one at KDS had any I-9 compliance training until two years prior to the audit, so that many of its older forms were deficient.

Third, although KDS did collect substantial documentation authenticating its employees' work status, it failed to fully complete many I-9 forms, and also failed to produce those forms in response to the ICE audit in a timely manner.

Fourth, KDS failed to adequately monitor its employees' completion of Section 1 of the forms, and also failed to ensure that all Section 1s were completed by the employee in a timely manner.

KDS attempted to seek relief from the penalty imposed upon it by filing a petition for review in the United States Court of Appeals for the Ninth Circuit in *Ketchikan Drywall Services, Inc. v. Immigration and Customs Enforcement*, 725 F.3d 1103 (9th Cir. 2013). But the three-judge court unanimously rejected its appeal.

In sum, the Ninth Circuit held that the administrative judge properly accepted ICE's penalty guidelines to calculate fines, despite the technical nature of the majority of KDS's failures to obtain and maintain completed forms. In so doing, it held KDS strictly responsible for its employees' errors in filling out Section 1, and deferred to the administrative judge's broad discretion in determining proper penalties.

The lesson is clear. Failure to comply with Form I-9 requirements can be extremely costly to a small businessperson.

### **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.

### **Attention Inspection Stations**

The association has received a flurry of requests for legal representation for violations of the DMV commissioner regulations known as "clean scanning." that is when a vehicle other than the one to be inspected is substitute for the OBD-II part of the test. We have no defense for these violations. DMV has the ability to trace the OBD-II inspection to the vehicle used for the inspection.

If you cannot pass a vehicle for any reason, get help. That help could come from DMV. This violation almost always results in revocation..

# \$afety Group 536

With a Financial history like this you have lots of reasons to smile.



## DIVIDEND HISTORY

35%	2010-2011
35%	2009-2010
35%	2008-2009
35%	2007-2008
30%	2006-2007
30%	2005-2006
25%	2004-2005
22.5%	2003-2004
17.5%	2002-2003
10%	2001-2002
15%	2000-2001
30%	1999-2000
40%	1998-1999

## DISCOUNT HISTORY

25%	2012
25%	2011
20%	2010
20%	2009
20%	2008
25%	2007
25%	2006
25%	2005
20%	2004
20%	2003
20%	2002
20%	2001
30%	2000

Current Group Management took over for the 04-05 policy year  
2008 20 % Discount due to 18% rate decrease

**Lawley**  
INSURANCE



**New York State Insurance Fund**

Workers' Compensation & Disability Benefits Specialist since 1914

# FREE MONEY

BE A MEMBER OF OUR ASSOCIATION OR AFFILIATES

FILL OUT THIS FORM AND FAX BACK TO US

BUY \$7500 IN PARTS IN ONE QUARTER FROM YOUR **NAPA DEALER**

RECEIVE A REBATE CHECK FOR 2% OF YOUR PURCHASES (MINIMUM OF \$150 REBATE)

PUT THE MONEY IN YOUR POCKET

# FREE MONEY

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