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# ATEG OF WNY

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## Department of Motor Vehicles Undercover Operation

A recent undercover audit operation by DMV is causing an inspection station to go to an administrative hearing. How it happened?

A DMV field investigator went to the station and asked for an inspection. The station accommodated the request. Several safety features were disabled on the vehicles. That station received violations for missing the following,

- ❖ The rear center seat belt latch assembly was removed causing the center rear seat belt and right rear seat belt not to buckle.
- ❖ The right side windshield wiper's blade was torn.
- ❖ Both reverse lights had their bulbs removed causing the reverse lights not to illuminate.
- ❖ The parking brake was made inoperative by loosening the adjuster of the brake cable and would not hold the vehicle stationary with the engine running at a slightly accelerated speed with the shift lever in the drivers position.

How to avoid getting into a situation where you need to go to a DMV hearing? When doing an inspection use a list and check every safety feature on it.

## Native American Sales of Cigarettes

Part of the casino/land claim/tax settlement between the Governor and the Oneida Indian Nation, ratified by the Legislature and the federal government, allowed licensed New York State distributors to resume delivering untaxed national-brand cigarettes to the Oneidas' Sav-On stores.

They began selling Marlboros, Newports etc. again about three weeks ago.

However, we are told that their prices on national-brand product are comparable with those of surrounding non-Indian retailers, in accordance with the agreement which requires them to charge the equivalent of the state excise tax and state and local sales taxes and abide by state minimum pricing. We'll see how long this lasts.

## Kicking Our Butts

*By Post Editorial Board March 25, 2014*

If you enjoyed a smoke in New York today, more likely than not the cigarette you lit up got here illegally. For that, you can thank our high tobacco taxes.

Nearly 57 percent of cigs consumed in New York are brought in illegally, according to a new report from the Tax Foundation, based on an analysis by the Mackinac Center for Public Policy. That's the highest percentage of illegal smokes of any state.

It's no coincidence that having the highest rate of illegal smokes coincides with having the nation's highest taxes on cigarettes. At \$4.35 a pack, New York's cigarette tax outstrips the next highest state (Rhode Island's \$3.46 levy) by 26 percent. And that doesn't count the \$1.50-a-pack tax New York City slaps on top of that, bringing the total to \$5.85 in Gotham.

New York isn't the only state with high levels of smuggling. The report found that, in general, states with high cigarette taxes have the most smuggling. Why? Because it gives smugglers an incentive to buy smokes in, say, Missouri, where the levy is 17 cents a pack, resell them illegally in New York under a high market price caused by high taxes — and pocket the difference.

"Public policies often have unintended consequences that outweigh their benefits," the report says. "One consequence of high state cigarette tax rates has been increased smuggling."

Bottom line: New Yorkers are getting more than half their cigarettes from a thriving black market. And this black market robs the state of the revenues it would gain if it weren't undercutting sales from legitimate outlets, such as bodegas.

Talk about a policy going up in smoke.

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## **State Launching Task Force To Stop Cigarette Smuggling, Tax Evasion**

In an effort to crack down on the sale of illegal smokes in New York, Cuomo is set to announce Monday a 13-agency task force dedicated to keeping illegal cigarettes out of the state.

“This new law-enforcement strategy will help to crack down on these illegal cigarette sales and capture those smugglers who seek to evade the law and rob the state of the revenue it is rightly owed,” Cuomo said.

A recent study by the Tax Foundation revealed that almost 57 percent of cigarettes smoked in New York were bought into the state illegally, the highest of any state. That was a 20 percent increase from the previous study, conducted in 2006.

New York State has the highest cigarette-tax rate in the country, making trafficking a profitable and attractive enterprise.

New Yorkers burn a hefty \$4.35 per pack in taxes — and those who light up in the Big Apple are slapped with an additional \$1.50 tax per pack.

In comparison, Missouri, has the lowest cigarette tax, at only 17 cents per pack, according to the study.

“Public policies often have unintended consequences that outweigh their benefits,” Tax Foundation Economist Scott Drenkard said in the report.

A 2012 study by the Virginia State Crime Commission gave an example in which smugglers could profit an estimated \$4 million on 800 cases when first buying the cigarettes in a low-tax state like Virginia and then selling them in New York City, according to the Tax Foundation’s study.

Virginia’s cigarette tax is just 30 cents a pack.

In 2013, two men were sent to prison for trying to smuggle more than 1 million unstamped cartons from Virginia into New York City and the Albany region.

The profit margin on smuggled cartons is higher than that on the sale of illegal drugs such as cocaine, heroin and marijuana, the study showed.

There are fines and penalties already in place to try to prevent such actions that end up robbing the state’s coffers of sales tax.

Penalties for selling illegal cigarettes can include a \$600-per-carton fine and possible criminal charges. But the enforcement has been lax.

The Tax Foundation’s study suggests some enforcement officials “turn a blind eye” to illegal shipments.

The new task force will include federal, state, and county agencies and will be headed by former NYPD Detective Michael Spinosa.

Spinosa, who is currently with the state Tax Department’s Criminal Investigations Division, has already seized smuggled cigarettes in 18 different cases, Cuomo said.

## **New York Attorney General Sues Fedex For Shipping Illegal Cigarettes**

New York Attorney General Eric T. Schneiderman announced that his office has filed a \$70 million lawsuit against FedEx for illegally shipping nearly 80 million contraband cigarettes to consumers across New York in violation of federal and state laws. The lawsuit joins and expands upon a complaint filed in December 2013 in Manhattan federal court by the City of New York and adds extensive claims of FedEx’s unlawful shipments around the state.

A press release notes that the joint complaint alleges that, between 2006 and 2012, FedEx made nearly 33,000 illegal shipments of cigarettes to consumers in New York, amounting to more than 400,000 cartons of untaxed cigarettes and a direct tax loss to the state of more than \$10 million. Each illegal shipment carries a maximum penalty of \$5,000. The shipments violated an agreement FedEx entered into with the state’s AG office in 2006, in which it agreed to cease all unlawful cigarette deliveries to consumers both in New York and throughout the country. The lawsuit further alleges that the company engaged in a pattern of racketeering activity with various cigarette retailers to traffic contraband cigarettes in violation of the federal anti-racketeering statute.

“FedEx’s blatant disregard for its long-standing agreement with New York, as well as federal and state law, enabled tens of millions of cheap, untaxed cigarettes to be shipped to New Yorkers,” Attorney General Schneiderman said. “Not only has FedEx cheated the state out of millions in tax dollars — but many of these cigarettes may have ended up in the hands of teenagers...”

The shipments by FedEx are prohibited by the federal Contraband Cigarette Trafficking Act (CCTA) and Prevent All Cigarette Trafficking (PACT) Act, as well as by New York State tax and public health laws.

Because the federal PACT Act requires shippers to affix specified labels identifying the contents as cigarettes and to report all sales into a state, which FedEx did not do, New York is entitled to significant penalties for these violations. Last, the Assurance of Compliance agreement reached with FedEx in 2006 provides that that company must pay a stipulated penalty of \$1000 per violation, amounting to approximately \$34 million.

## **FDA Ready To Rule On Electronic Cigarettes**

The U.S. Food and Drug Administration is "pushing very hard" to release a proposed rule that would establish the agency’s authority over electronic cigarettes, Reuters reports.

FDA Commissioner Margaret Hamburg told members of Congress during a Senate budget hearing last week that it has taken too long to move the rule forward, and that she expects the proposal to be ready “very soon.” The news source adds that FDA’s proposal has been under review by

the White House's Office of Management and Budget (OMB) for about five months.

The news source notes that U.S. Sen. Jeff Merkley (D-OR) told Hamburg during the hearing the FDA's delays were "disgraceful," noting that "Four years and four months to get the first draft over to OMB is unacceptable and that for OMB to sit on the proposal for months is also unacceptable.

Hamburg agreed that the criticisms were fair, notes Reuters. "I do believe that very soon I will be able to call you, and say the deeming rule is out," she said.

In 2009, the FDA was granted the authority to regulate the manufacture and retail of tobacco products.

Meanwhile, the U.S. Centers for Disease Control and Prevention (CDC) is reporting that the number of calls to poison centers involving e-cigarette liquids containing nicotine is increasing, going from one call per month in September 2010 to 215 per month in February 2014.

CDC also found that more than half (51.1%) of the calls to poison centers due to e-cigarettes involved children under age 5, and about 42% of the poison calls involved people age 20 and older.

In response to the CDC's report, Reynolds American Inc. says that its Vuse e-cigarette is designed to "minimize chances for accidental exposure." Jason Healy, president of Lorillard Inc.'s Blu eCigs, told ABC News that the CDC's findings are "a weak argument" against e-cigarettes and evidence of "an on-going attack on the e-cigs industry by various anti-smoking groups," reports the Winston-Salem Journal.

### **Prepayment Of Sales Tax And The NYS Budget**

A bill that changed the method of collecting sales tax on motor fuel was included in this years State Budget.

The changes are there are now three regions.

- Nassau and Suffolk will have a prepayment of twenty-one cents,
- The New York Metropolitan Area will have a prepayment of seventeen and one half cents and
- Upstate is now sixteen cents.

### **Industry Should Brace For Revised Overtime Rules**

A plan to revise the federal rules governing who's entitled to overtime pay could have a significant and direct impact on gas stations, lawyers familiar with labor law said.

The White House has suggested that many people classified as managers in these industries should either make higher salaries or should be reclassified and entitled to overtime pay.

The president has directed the Department of Labor (DOL) to update the exceptions to the rules calling for employees who work more than 40 hours a week to get overtime pay. A common exemption is for workers paid more than \$455 a week to be classified as "executive, administrative, or professional."

The proposed rule change, which would need to go through the DOL rulemaking process, could alter the exemption's description of duties and its minimum pay requirements.

The White House pointed out that if the current floor were adjusted for inflation, it would be \$561 a week today, but it hasn't publicly directed the Labor Department to adopt a specific amount.

The U.S. Bureau of Labor Statistics reports that in 2012, gas station first-line managers earned a median salary of \$31,720 a year, which comes to \$610 a week. But the median is the mid-point of those salaries, so a substantial number of gas station managers are earning below that. And the pay can be diluted if the manager works more than a 40-hour week.

When you calculate the median pay in terms of hours, it comes to \$15.25 per hour for those working 40 hours a week; \$12.20 per hour for those working 50 hours a week; and \$10.17 per hour for those working 60 hours a week.

The BLS reports there were 82,140 first-line supervisors at gas stations in 2012. There's no breakout for convenience store managers, but NACS research shows that c-stores account for the vast majority of the gasoline retailed.

In announcing the plan, the White House specifically mentioned c-store managers and the Labor Department mentioned gas station managers. That suggests the pay scales of these positions are under sharp scrutiny, labor lawyers said.

"This is a clear indication that the convenience store industry and its pay practices are in the cross-hairs of the federal government," said management labor lawyer Matt Austin, based in Columbus, Ohio. "Whether that means more Department of Labor audits or investigations, is yet to be seen. But this is a warning to the industry that they need to comply with the law because the government's coming after them."

And Thomas Bundy, a partner in the Washington office of law firm Sutherland, Asbill & Brennan LLP, said gas stations and c-stores "should pay attention."

Labor Secretary Tom Perez stated in a March 13 official blog that "all too often, these salaried employees are earning less per hour than the employees they supervise. Consider the two New Jersey gas station managers encountered by the Labor Department's Wage and Hour Division. Despite typically working 65 hours per week (say 7 a.m. to 8 p.m. every weekday), their salary was so low that they weren't even making the equivalent of the minimum wage."

Perez wrote, "The law provides for some exceptions [to the overtime rules], but the exceptions haven't kept up with our modern economy. These exceptions were originally designed to only apply to well-compensated employees with greater job security, more bargaining power, and higher potential for promotion."

He stated that the \$455 trigger "doesn't make sense" and is below the poverty line for a worker supporting a family of four.

Austin stated that for now, gas station/c-store owners should consult with their attorneys and make sure they're

complying with the law and have classified employees correctly with regard to whether they are exempted from overtime requirements.

One pitfall many mom-and-pop gas stations/c-store owners fall into is the owner performs so many managerial duties that it erodes the amount of managerial duties performed by the "manager." As a result, those individuals might end up functioning as workers who should receive overtime but who don't because the owner classified them as salaried managers.

Employers should remember that, in classifying employees, what matters is the type of duties the worker actually performs as opposed to the worker's title, or what's in a written job description, Austin said.

Bundy said the ramifications are broad and they fit with President Obama's focus in recent months to increase the wages of working people. The president has raised the minimum wage for federal contract workers and is asking Congress to boost the federal minimum wage for all workers.

Obama might be using the overtime-revision plan as leverage to try to get Congress to boost the minimum wage, Bundy speculated. In most industries, he said, employers would be more troubled by revised overtime requirements than they would an increase in the minimum wage.

*Vincent Taylor, vtaylor@opisnet.com*  
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### **Connecticut Passes \$10.10 Minimum Wage**

The Connecticut General Assembly voted earlier this week for legislation to raise the state's \$8.70 minimum wage to \$10.10 by January 2017, the CT Mirror reports.

The bill passed both the Senate and House, and becomes a political talking point for Governor Dannel Malloy and President Obama. Malloy was expected to sign the bill yesterday evening.

With the bill, Connecticut becomes the first state to establish a minimum wage in excess of \$10. Washington State currently has the highest at \$9.32.

"I am proud that Connecticut is once again a leader on an issue of national importance. Increasing the minimum wage is not just good for workers, it's also good for business," Malloy said .

President Obama issued a statement praising the legislation and urging Congress to follow Connecticut's lead. "But to truly make sure our economy rewards the hard work of every American, Congress must act," Obama said. "I hope members of Congress, governors, state legislators and business leaders across our country will follow Connecticut's lead to help ensure that no American who works full time has to raise a family in poverty, and that every American who works hard has the chance to get ahead."

Connecticut's current \$8.70 minimum wage is the nation's fourth highest, trailing Washington (\$9.32), Oregon (\$9.10) and Vermont (\$8.73).

### **Locked Out: OEM's Growing Control Of Consumers**

Each year, thousands of cars roll off manufacturing lines. Today, most contain embedded telematics systems (like OnStar). Over time, this will enable original equipment manufacturers (OEMs) to "own" consumers.

Brake light goes on? The car's computer sends notice to the local dealership's service department. An e-mail gets triggered, reminding the consumer to get their brakes checked. No response from the consumer? A discount goes out, incentivizing the consumer to get their brakes checked. All automated. All locking the aftermarket out from interacting with the consumer at the moment of choice.

One company fighting for the aftermarket? Atlanta's Vehcon, Inc.

"Car manufacturers are building a closed ecosystem for the entire vehicle ownership lifecycle," says Vehcon CEO Fred Blumer. "Within the next 10 years – unless the automotive aftermarket develops an effective response – they will be shut out of the service market significantly."

"The key to the aftermarket's future is to tap into the consumer's desire for choice – people like options and Americans hate the thought of being manipulated," said Blumer. Blumer encouraged the aftermarket to side with consumers on data rights and, more than anything else, to provide the consumer with alternative, attractive options to OEM systems.

"As consumers realize the value of their data, they will seek to utilize it for their benefit," said Blumer. The aftermarket could leverage existing hardware for accessing consumer data. Options include partnering with usage-based insurance programs (i.e. Progressive's "Snapshot" plug-in dongle) and subprime lending/GPS tracking systems.

However, these systems are costly to operate as they involve distribution and connectivity charges.

As an alternative to hardware-based systems, Blumer recommends smartphone-based solutions.

"Smartphone solutions have no hardware costs, provide real-time car and consumer data, enable location-based offers, and work on every car," said Blumer. "This enables the right offer, at the right time, in the right place."

About Vehcon, Inc.

Vehcon Inc. extracts data from vehicles using smartphone technologies, enabling consumer to lower the total cost of vehicle ownership. The company's patent-pending solutions capture predictive data, such as odometer readings and area of operation, and provide a platform for communicating offers from its marketing partners back to the consumer. Founded in 2012 by innovators in vehicle telematics, mobile data analytics and mobile applications, Vehcon Inc. is headquartered in Atlanta, Ga. For more information, visit <http://www.vehcon.com>

### **Generator Switch Required By April 1, 2014**

We ask the State several question on what would happen if a station did not install a switch that can accommodate a generator in the event of a declared emergency such as the Sandy Storm.

- Question: What will happen if a station does not have a generator switch installed by April 1, 2014?
- Answer: The Department expects station owners within the ½ mile range to be in compliance with AGML Article 16, section 192-h by the April 1, 2014, deadline. However, prior to issuing any penalties the Department will take into consideration stations that have applied for a grant and are in the process of complying or, if they are not applying for a grant, can provide evidence that they have entered into a contract with an electrician to have a transfer switch installed.
- Question: We have heard that a violation will not be issued unless an emergency is declared?
- Answer: We have not heard of a policy like this.
- Question: What is being done to help the stations comply with the law?
- Answer: State Specialists have been visiting stations for the last several weeks offering assistance and explaining the program. NYSEDA has a Helpline for the grant program which can be reached at 1-855-323-3030.

If you need help please call the Association Office

## **Energy Information Administration**

### **Summer Fuels Outlook**

During the April-through-September summer driving season this year, regular gasoline retail prices are forecast to average \$3.57 per gallon, according to the U.S. Energy Information Administration (EIA). The projected monthly national average regular retail gasoline price falls from \$3.66 per gallon in May to \$3.46 per gallon in September.

EIA expects regular gasoline retail prices to average \$3.45 per gallon in 2014 and \$3.37 per gallon in 2015, compared with \$3.51 per gallon in 2013. The July 2014 New York Harbor reformulated blendstock for oxygenate blending (RBOB) futures contract averaged \$2.85 per gallon for the five trading days ending April 3, 2014.

Based on the market value of futures and options contracts for this key petroleum component of gasoline, there is a 3% probability that its price at expiration will exceed \$3.35 per gallon, consistent with a monthly average regular-grade gasoline retail price exceeding \$4 per gallon in July 2014.

The North Sea Brent crude oil spot price in March averaged near \$110 per barrel for the ninth consecutive month, while West Texas Intermediate (WTI) crude oil prices remained flat near \$101 per barrel. New pipeline capacity from the Midwest into the Gulf Coast helped reduce inventories at the Cushing, Oklahoma, storage hub to 27 million barrels by the end of March 2014, the lowest level since November 2009. The discount of WTI crude oil to Brent crude oil, which averaged more than \$13 per barrel from November through January, fell to \$7 per barrel in March. EIA expects the WTI discount to average \$9 per barrel in 2014 and \$11 per barrel in 2015.

### **Appeals Court Overturns Debit Rule**

A federal appeals court on Friday, March 21, reinstated a 2011 Federal Reserve rule on the fees banks can charge merchants when customers use their debit cards, a setback for retailers, writes the Wall Street Journal.

"It is unfortunate that the D.C. Circuit Court of Appeals misread the law and the Federal Reserve's rule on debit swipe fees. Any rule that would allow profit margins of more than 1,000% and raise fees on many transactions clearly violates the letter and intent of the law Congress passed," said NACS President and CEO Henry Armour. "Congress did the right thing by trying to make debit swipe fees more competitive and the law did that in spite of the Fed's mistakes. We intend to review all of our options for upholding what Congress did and ensuring that debit swipe fees become more reasonable for convenience retailers and their customers."

Friday's decision reverses the ruling handed down last summer by U.S. District Court Judge Richard Leon, who said that the Federal Reserve clearly disregarded Congress's intent by inappropriately inflating all debit card transaction fees by billions of dollars, which have continued to allow financial institutions to charge exorbitant fees that are ultimately born by consumers. In January, attorneys representing NACS urged the U.S. Court of Appeals for the District of Columbia Circuit to uphold Leon's decision.

U.S. Senator Dick Durbin commented on Friday's ruling: "Today's opinion by a panel of appellate judges is a giveaway to the nation's most powerful banks and a blow to consumers and small businesses across America," he said. "The court completely ignored how the Federal Reserve's swipe fee rule allowed Visa and MasterCard to dramatically increase debit swipe fees on many small businesses, contrary to Congress's clear language and intent. The court also astonishingly claimed that the swipe fee amendment was crafted in secret and at the last minute. If the court had taken the time to carefully read the law and its history they would have known the amendment was debated and approved on the Senate floor with a strong bipartisan majority months before enactment. Today's ruling is both confused and tilted heavily towards the big banks and card giants."

## **General Counsel Corner**

By Peter H. Gunst, Esquire

### *For Lack Of A Comma*

A recent, significant federal appeals court decision concerning swipe fees for debit cards provides further evidence if any were needed of how bizarre judicial decision-making can be.

Service station and convenience store operators well know the significant role that debit cards play in today's retail economy. By 2009, debit cards had become the dominate form of payment in the United States, surpassing credit cards in number of transactions and in dollar volume. Debit card processing is dominated by Visa and MasterCard, which process over 80% of all debit transactions. Not surprisingly given their market power, Visa and MasterCard

were able by 2009 to increase the swipe fees that they charge to 44 cents on average for each debit card transaction.

Enter the Durbin Amendment enacted by Congress in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In an effort to restrict the amount of the swipe fees that could be charged to a merchant, the Durbin amendment limited debit card swipe fees to the “incremental cost” incurred by an issuer for the “authorization, clearance, or settlement of a particular debit “transaction,” and specifically eliminated from the cost formula costs which are not specific to any particular electronic debit transaction.

See 15 USC §1693 o-2 (a)(4)(B).

In sum, the Durbin Amendment restricted debit swipe fees to the variable cost attributable to a particular debit transaction, while eliminating from the equation the issuer’s fixed costs.

Congress gave the Federal Reserve Board the task of enacting rules to enforce the Durbin Amendment’s cost allocation formula.

In late 2010, the Board proposed its implementing rules, which were based upon limiting swipe fees to the incremental cost attributable to a particular transaction, which amounted to a fee cap of 12 cents per transaction, considerably less than the 44 cents the issuers had previously received on average.

After receiving thousands of comments, the Board in its Final Rule almost doubled the proposed cap to 21 cents, adding one half of 1% of each transactions value, plus an additional one cent per transaction if the issuer implemented certain fraud-prevention measures.

The Board’s almost doubling of the proposed debit card swipe fee was attributable to its inclusion in the calculation of recoverable costs certain items which were not attributable to any specific debit card transactions. These included the cost that issuers incurred as the result of transactions-monitoring to prevent fraud, the issuer’s anticipated fraud losses, network processing fees and some other fixed costs.

The National Association of Convenience Stores (“NACS”) and a number of retailers sued the Board in D.C. federal court, charging that the Final Rule created a new category of reimbursable costs out of whole cloth, costs which bore no relation to any specific debit card transaction and thus exceeded what Congress had allowed.

At first, NACS and its allies were successful. The trial court granted their motion for summary judgment, finding in no uncertain terms that the Board had erred in allowing issuers to recover fixed costs and costs not attributed to any specific transaction. The Board then appealed to the United States Court of Appeals for the District of Columbia.

The appellate court’s decision dated March 21, 2014 was a thing of wonder. It reversed the trial court and allowed the Board’s creation of an additional set of costs never referred to anywhere in the Durbin Amendment. It did so in a manner that would have made a medieval scholastic proud.

By parsing obscure grammatical rules, the appeals court determined that Congress by failing to place a comma before its use of the word “which” in the key provision of the Durbin Amendment had opened the door to the Board’s inclusion in its Final Rule of an entirely new set of cost items never identified in the Durbin Amendment. That this was truly Congress’s intent is hard to swallow.

Even a prominent critic of the Durbin Amendment harshly criticized the appellate court’s opinion. Labeling it an exercise in “judicial obscurantism,” Professor Richard Epstein stated that “it does not take a genius” to recognize that the transaction-specific costs expressly identified in the Durbin Amendment were all that Congress intended to permit.

The real world significance of the Court’s opinion is extensive. Debit card swipe fees will be almost twice as high as they otherwise would have been. And this, says the court, is because of a lack of a comma.

#### **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 substituted 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..

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## Growth Of E85 Fuel Moves Beyond The Midwest

E85 fuel has been a common sight at gas stations across the Midwest, and now more outlets in other regions of the country are adding the alternative fuel to their pumps.

According to the Alternative Fuels Data Center (AFDC), Minnesota continues to lead the nation with 336 E85 retail locations. However, in recent years, the fastest growth of E85 outlets is taking place in states outside the Midwest.

Currently, 2 percent of all retail stations in the United States offer E85, serving the approximately 5 percent of U.S. light-duty vehicles that are capable of running on the fuel, which is a blend of 85 percent ethanol and 15 percent gasoline.

Gas stations selling E85 historically have been concentrated in the Midwest, where retail outlets benefit from the readily available ethanol fuel supplied to blenders. In 2007, the earliest year for which state-level E85 data is available, the majority of E85 stations were located in just

five states: Minnesota, Illinois, Indiana, Iowa and Wisconsin, according to the U.S. Energy Information Administration (EIA).

While Midwest states continue to add significant numbers of new E85 retail locations, California, New York, Colorado, Georgia and Texas also have experienced rapid growth of E85 availability, adding more than 49 retail locations each between 2007 and 2013. As a result, the share of nationwide E85 stations in the five traditional ethanol-producing states of the Midwest fell from 54 percent in 2007 to 36 percent in 2013, EIA reported.

The fastest growth is coming from California and New York, both of which increased from fewer than a dozen stations combined in 2007 to more than 80 stations each in 2013. On the flip side, New Hampshire and Alaska are the only states without any E85 stations -- down from nine states in 2007.

Still, growth of E85 locations is slowing down. The number of E85 fueling stations in the United States increased from 1,229 to 2,442 between 2007 and 2011, but only increased by 7 percent from 2011 to 2013, when the total reached 2,625, according to EIA.

With the exception of New York, the Northeast has continued to see slow adoption of E85 by retailers. In 2007, there were no retail stations selling E85 in New England. By 2013, only 13 had been added, most located in Massachusetts.

In addition, several states -- most notably, Minnesota and North Carolina -- actually reported fewer E85 retail locations in 2013 than the year before.

## E-Cigarette Tax Hike In Washington State Moves Forward

Washington state lawmakers have approved a 75% tax on electronic cigarettes, the Associated Press reports.

The House Finance Committee passed H.B. 2795 with a 7 to 6 vote. Originally, the bill called for a 95% tax on the distribution of e-cigarettes.

The vote was contentious, with Rep. Car Condotta criticizing the tax, maintaining e-cigarettes are an important tool in smoking-cessation efforts.

"This (tobacco substitute) industry has accomplished more in just a few years than they've done in 25 years in getting people off (tobacco)," he said.

Rep. Gerald Pollett questioned the safety of the vaping devices. "The industry itself refuses to do the long-term credible studies that are needed," he said.

However, Rep. J.R. Wilcox said any charges of safety concerns are simply a red herring. "This bill has nothing to

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do with safety or health," he said. "There's nothing in this bill that regulates. It's just a tax bill."

The bill would drop the taxation if the federal government approves e-cigarettes as a smoking-cessation device.

### **NHTSA Announces Long-Awaited Advancement Of Connected Vehicle Technology**

Officials from U.S. Department of Transportation and the National Highway Traffic Safety Administration announced that they will move connected vehicle technology forward in an effort to greatly improve safety and save lives on the nation's roadways. Also known as vehicle to vehicle technology (or V2V), the system allows vehicles to communicate potential risks to drivers and avoid rear-end, lane change, and intersection crashes.

"V2V crash avoidance technology has game-changing potential to significantly reduce the number of crashes, injuries and deaths on our nation's roads," said NHTSA Acting Administrator David Friedman in a statement. "Decades from now, it's likely we'll look back at this time period as one in which the historical arc of transportation safety considerably changed for the better, similar to the introduction of standards for seat belts, airbags, and electronic stability control technology."

The American Association of State Highway and Transportation Officials praised the USDOT and NHTSA for their support for life-saving connected vehicle technology. Former AASHTO President and Michigan Department of Transportation Director Kirk Steudle, a national expert and leader in traffic safety and connected vehicle technology, said that "today's announcement by NHTSA officials is a positive step for our ultimate goal of delivering the safest and most efficient transportation system imaginable."

Steudle added, "This is a significant announcement for the future of safe mobility and a day that will lead to great reductions in traffic fatalities. USDOT should be commended for its leadership and vision." Steudle, who recently represented AASHTO before the House Transportation and Infrastructure Subcommittee on Highways and Transit at a hearing on connected vehicle technology, highlighted three additional points:

- Connected vehicle technology holds the promise of a future in which we move around our communities in accident-free vehicles.
- State DOTs look forward to working with the research community, automakers, and federal officials to further the research, development, and testing required to fully implement autonomous vehicle technology.
- The continued strong support and cooperation between state transportation departments, the U.S. Department of Transportation, and global automakers will be critical to the successful and rapid deployment of the safest possible vehicles and transportation infrastructure.

USDOT is currently conducting a safety pilot program in Michigan, the largest ever of its kind, to test 3,000 vehicles equipped with the connected vehicle technology.

The purpose is to test the interoperability of the technology from various vehicle manufacturers and suppliers to make sure they are able to work together once

### **Menu Labeling Pushed Until End Of Year**

Americans will wait a little longer to find out how many calories are in menu items at chain restaurants with more than 20 U.S. locations, the National Review reports. The U.S. Food and Drug Administration missed its February deadline for issuing final rules on menu-labeling requirements.

The agency had indicated it would finalize those guidelines early this year, but instead has yet to finish the requirements. "We are currently reviewing comments submitted in response to the proposed rules and hope to issue final regulations by the end of the year," said Theresa Eisenman, FDA spokeswoman.

The menu label requirement has come under attack from food retailers and others because of onerous rules and lack of clarity as to which type of establishment the guidelines would effect. In a 2013 interview, FDA Commissioner Margaret Hamburg indicated that crafting the rules had become very complicated. "There are very, very strong opinions and powerful voices both on the consumer and public health side and on the industry side, and we have worked very hard to sort of figure out what really makes sense and also what is implementable," she said.

Proposed rules posted in April 2011 garnered more than 900 comments, which has met with supermarkets, small foodservice establishments and food chains to hear their concerns and suggestions. But three years has passed with the agency still not ready to submit final rules.

### **EPA Releases Final Cleaner Fuel, Car Standards**

Based on extensive input from auto manufactures, refiners, states and public health and environmental organizations, the U.S. Environmental Protection Agency (EPA) yesterday announced new standards for cars and gasoline that the agency claims will significantly reduce harmful pollution, prevent thousands of premature deaths and illnesses and enable efficiency improvements in vehicles.

These cleaner fuels and cars standards are an important component of the Obama administration's national program for clean cars and trucks, which also include historic fuel efficiency standards that are saving new vehicle owners at the gas pump today. The standards will significantly reduce ground-level ozone, particulate matter, benzene and other air toxics in the air we breathe.

Automobile makers, states and environmental and public health organizations expressed their support of the changes. "EPA's Tier 3 rule will provide a significant

opportunity to further reduce emissions from the light-duty vehicle fleet by utilizing an integrated systems approach that combines advanced emission control technologies with advanced engine designs and very low sulfur gasoline fuel,” said Joseph Kubsh, executive director of the Manufacturers of Emission Controls Association, in a press release.

“EPA has taken a giant step forward by finalizing regulations that cut harmful pollutants from existing and new cars and trucks,” said Kenneth Kimmell, commissioner of the Massachusetts Department of Environmental Protection. “We will see cleaner air and healthier families in Massachusetts because of this common sense, cost-effective rule to reduce the amount of sulfur in gasoline.”

George Slover, senior policy counsel for Consumers Union, added, “Millions of Americans struggle with health issues like asthma and respiratory problems that come from breathing air that’s heavy with smog and other pollutants. These rules will reduce air pollution by promoting cleaner gasoline and cleaner cars, and as a consumer group, we think it’s going to make a big difference for public health. Low-sulfur gasoline will help automakers develop new technologies for more fuel-efficient cars and trucks, and when you add up the benefits for better health and better vehicles, we think it’s a big win for consumers.”

The refining industry, however, reacted with concern. In a statement, Charlie Drevna, president of the American Fuel and Petrochemical Manufacturers, said “EPA’s decision to move forward on Tier 3 is the most recent example yet of the agency’s propensity for illogical and counterproductive rulemaking. Tier 3 not only lacks scientific justification, but in fact will lead to higher greenhouse gas emissions due to the greater energy-intensive refining process required to reduce sulfur in gasoline from 30 ppm to just 10 ppm. To date, refiners have achieved a 90 percent reduction in sulfur levels and the nation’s energy-related emissions are at their lowest level since 1994 according to EPA data. The Agency’s own data also shows that in the absence of Tier 3, emission reductions will continue.”

### **AASP Denounces Insurer Meddling in Parts Procurement**

The Alliance of Automotive Service Providers (AASP) views State Farm’s newly-mandated bidding process for parts procurement as an unprecedented and uninvited intrusion into the business of collision repair. Despite posturing from the largest national insurance carrier on what it believes to be positive attributes of the program, collision repair facilities, parts suppliers, parts manufacturers and interested parties around the country have been consistent in their perception that this type of activity will ultimately harm their businesses and the customers they serve.

Collision repairers are in the business of selling parts, labor and materials at a retail level. Each of these revenue sources contributes to the overall success of the roughly 35,000 small businesses across the nation, allowing the business to provide employment opportunities to individuals within their community, and invest in the necessary

equipment and training needed to provide customers with safe, quality repairs. As is the case with all types of business – including the business of insurance – the pursuit of a return on investment (profit) is a core principle, and one that collision repairers should neither apologize for nor relinquish to the influence of other parties.

Insurers are in the business of insuring risk and then settling losses at market value when those losses occur. As the payer of claims, insurers should not be “market makers” for pricing of individual products and services that are components of final invoices. To date, insurance pressure and influence over collision repair market pricing has driven average profit margins to low single-digit figures, despite the fact that the business of collision repair has a high cost of entry and requires ongoing capital investments to keep pace with automotive technologies.

Feedback from other markets outside the U.S. familiar with insurer-mandated bidding platforms indicates that the State Farm parts bidding program is a win-lose scenario, with repairers losing both profit and control of their business. Furthermore, the negative impact of this parts program has the very real potential to quickly spread beyond parts to other areas, such as paint, and beyond the boundaries of voluntary Direct Repair Program (DRP) agreements to the industry at-large. If State Farm contends that this parts program is indeed good for the collision industry, surely the industry would embrace the program on a voluntary basis – assuming the benefits of the program did indeed extend to more participants than just the carrier.

The collision repair industry has gradually transitioned from a proud trade of hard-working owners and employees, to a service provider that subcontracts to the insurance industry, working on net margins that it no longer controls and that jeopardize its ability to invest in its business and to attract and train qualified employees to ensure safe and quality repairs. AASP has grave concerns for its members’ future welfare if giant insurance corporations are permitted to trample on the free market philosophies that support a culture of small business success.

### **AASP Joins Other Collision Repair Organizations to Issue Statement on Industry Repair Standards**

In an effort to define a foundation and a road forward, the most prominent collision repair organizations representing the voice of collision repairers nationally, issued and signed a joint statement officially recognizing OEM vehicle manufacturer published repair procedures as the industry’s repair standards.

In addition to AASP, the organizations making the declaration included the Automotive Service Association (ASA), Society of Collision Repair Specialists (SCRS), and Assured Performance Network. The statement was presented on Wednesday, November 3, 2011 to those attending the Collision Industry Conference (CIC) in Las Vegas, Nevada. The statement read as follows:

“The undersigned organizations continue to be the leading voice of collision repair businesses and technicians

across the United States, just as they have for decades. Representing their interests, we hereby recognize published repair procedures, as provided by automotive original equipment manufacturers (OEM), as the official industry recognized "Repair Standards" for collision repair. These standards, where they exist, shall be the basis for the establishment of training, testing, repair practices, and documentations.

"Whereas, we acknowledge that OEM repair procedures are incomplete in comparison to the full scope of vehicles and repair operations which exist in the marketplace; the OEM published repair procedures shall serve as the baseline for industry repair standards, with the recognition that further development of procedures will be necessary in areas not covered by published procedures.

"Therefore, we officially ask the board of directors for the Inter-Industry Conference on Auto Collision Repair (I-CAR), to establish within their overall organizational structure, an industry council to identify gaps in existing OEM procedures and develop processes to close gaps, vet industry proposed alternatives, modifications, and additions to OEM procedures. The Council will include volunteer representatives serving at least ASA, SCRS, AASP, and I-CAR."

While most assume OEM repair procedures are standards by default, it has never been officially established until now. As these groups collectively represent collision repair businesses and technicians across the United States, their official adoption and declaration provides a much needed foundation and focus to the industry's effort to establish collision repair standards.

### **Colorado Lawmakers Seek Online Lottery Sales Ban**

The Colorado House voted "yes" this week on a bill that prohibits the sale of lottery tickets online, CBS Denver reports.

The bill bans the Colorado Lottery Commission from approving such sales and permits only in-person sales at licensed stores. A final vote is expected this week in the Senate.

State Rep. Brian DelGrosso, the sponsor of the bill, said it's a way to curb underage gambling, while state Rep. Dan Pabon opposed the bill, calling it a protectionist measure to stop market forces.

### **Rhode Island C-store Owners Plead Guilty To Food Stamp Fraud**

A two-year federal investigation resulted in the sentencing of two Rhode Island convenience store retailers to federal prison after they plead guilty to food stamp fraud, according to a statement from the U.S. Department of Justice. Nine other Rhode Island c-store owners, managers and employees are scheduled to be sentenced in the coming months following their own guilty pleas.

The coordinated investigation involved U.S. Attorney Peter F. Neronha; the U.S. Department of Agriculture,

Office of Inspector General; the U.S. Department of Agriculture, Food and Nutrition Service, Retailer Investigations Branch; the Internal Revenue Service, Criminal Investigation; and the Rhode Island State Police. The investigation revealed that the defendants defrauded the Supplemental Nutrition Assistance Program (SNAP) of more than \$3 million.

Store owners and/or their employees violated the program's laws and regulations by allowing SNAP benefit recipients to exchange those benefits for cash. The defendants then added a surcharge to the recipients' withdrawal of SNAP benefits that was usually equal to the amount of cash exchanged.

The defendants include:

- Asra Qadir and Waqif Qadir, owners of Express Food Mart in Warwick, R.I., pleaded guilty Feb. 21 to conspiring to defraud the food stamp program. The Qadirs are scheduled to be sentenced by U.S. District Court Judge Mary M. Lisi on May 15.
- Amir Rasheed, owner of Stop & Go c-store in Providence, pleaded guilty to conspiring to defraud the food stamp program, food stamp fraud and money laundering. Rasheed is scheduled to be sentenced May 22.
- Cristina Ramirez, owner of Cristina's Market in Providence, was sentenced by Lisi on Dec. 19 to 12 months and one day in federal prison, to be followed by three years of supervised release, with the first six months to be served in home confinement. Ramirez was also ordered to pay \$399,000 in restitution to SNAP. Ramirez pleaded guilty Oct. 4 to conspiracy to commit food stamp fraud and money laundering.
- Glenda Lopez, owner of the Dugout convenience store in Providence, was sentenced by Lisi on Dec. 19 to 18 months in federal prison, to be followed by three years of supervised release, with the first six months to be served in home confinement. Lopez was also ordered to pay \$398,000 in restitution to SNAP. Lopez pleaded guilty on Oct. 4 to conspiracy to commit food stamp fraud, money laundering and filing a false tax return.
- Stop & Go employee Mashhod Afzal pleaded guilty Dec. 9 to one count each of conspiracy to commit food stamp fraud and making false statements. Afzal is scheduled to be sentenced March 7.
- Corner Store manager Mohamad Barbour pleaded guilty Dec. 17 to one count of conspiracy to commit food stamp fraud and is scheduled to be sentenced March 6.
- Stop & Go manager Karuna Mehta pleaded guilty Dec. 20 to one count of conspiracy to commit food stamp fraud and seven counts of food stamp fraud. Mehta is scheduled to be sentenced April 3.
- Mustafa Al Kabouni, owner of the Corner Store and the Regency Mart in Providence pleaded guilty Feb. 4 to one count of conspiracy to commit food stamp fraud, three counts of food stamp fraud, eight counts of wire fraud and six counts of money laundering, and is scheduled to be sentenced May 1.

- Regency Mart employee Mohammad Amir Al Kabouni pleaded guilty Feb. 4 to one count of conspiracy to commit food stamp fraud and four counts each of food stamp fraud and wire fraud, and is scheduled to be sentenced May 1.
- Regency Mart employee Muhammad Eid Al Kabouni pleaded guilty Feb. 7 to one count of food stamp fraud and is scheduled to be sentenced May 2.  
Assistant U.S. Attorneys Sandra R. Hebert and Richard B. Myrus are prosecuting the cases.

### **Filling Your Tank Up on Sales Tax**

For most people, a conversation about gasoline prices is a debate about whether prices are a little too high or a lot too high. But to the owner of that gas station, a conversation about gasoline prices is often a headache about taxes. Many customers fail to realize that the price they pay at the pump includes numerous federal, state and local taxes. One of the most costly taxes included is sales tax.

Sales tax is different from many other taxes in that it is a fiduciary responsibility. Therefore, not only can a business be assessed sales tax plus interest (and penalties in many cases) but a “responsible person” of the business can also be assessed. That’s right; you can be on the hook personally!

So where do these sales tax assessments stem from? Generally, assessments stem from audits. Gas stations, especially those with a convenience store or repair facilities, are often targeted for sales and use tax audits in New York State.

When audited, there are three different areas of sales that auditors typically review: gasoline sales, cigarette sales and convenience/repair store sales. As a vendor in New York State, you need to be able to show an auditor that the correct amount of sales were reported, that tax was collected on sales when it was supposed to be collected and that the tax which was collected was remitted to New York State. If you cannot adequately document all of those things you could be assessed. If you can document all of those things but you made a mistake somewhere in the documents which led to an underreporting, you can be assessed. Just because you made an honest mistake doesn’t mean you won’t be assessed tax and interest (and potentially penalties.)

Auditors also typically review the purchases of a gas station to verify tax was paid when it was supposed to be paid. Sales tax almost always has to be paid on the purchase of gasoline and on cigarettes by a gas station. This is actually a prepayment of the sales tax which, if done correctly, should be credited when filing a sales tax return. There are many other items on which tax should be paid. One of the most important things to know is that just because a vendor did not charge sales tax does not mean tax is not due. A business may have to self-assess use tax.

Between sales, purchases and the possibility of additional penalties, it is important that a gas station file its sales and use tax returns correctly. Unfortunately, because of the other taxes imposed on gasoline sales, completing the

correct calculations can be complex and confusing for some owners and accountants alike.

The best advice we could give is to be proactive. If you have any concerns that the sales and use tax returns are not being completed correctly, look into it. If you are selected for audit, don’t ignore the auditor. Be proactive now and you’ll be grateful you were later.

Written by Joseph Calamia II, Senior Tax Specialist  
Sales Tax Defense LLC  
www.SalesTaxDefense.com 631-491-1500

### **The Premium Tax Credit**

The premium tax credit can help make purchasing health insurance coverage more affordable for people with moderate incomes. To be eligible for the credit, you generally need to satisfy three rules.

First, you need to get your health insurance coverage through the Health Insurance Marketplace. The open enrollment period to purchase health insurance coverage for 2014 through the Health Insurance Marketplace runs from October 1, 2013 through March 31, 2014.

Second, you need to have household income between one and four times the federal poverty line. For a family of four for tax year 2014, that means income from \$23,550 to \$94,200.

Third, you can’t be eligible for other coverage, such as Medicare, Medicaid, or sufficiently generous employer-sponsored coverage.

If a Marketplace determines that you’re likely to qualify for the tax credit at the time you enroll, you have two choices: You can choose to have some or all of the estimated credit paid in advance directly to your insurance company to lower what you pay out-of-pocket for your monthly premiums during 2014. Or, you can wait to get all of the credit when you file your 2014 tax return in 2015.

If you wait to get the credit, it will either increase your refund or lower your balance due.

If you choose to receive the credit in advance, changes in your income or family size will affect the credit that you are eligible to receive. If the credit on your tax return you file in 2015 does not match the amount you have received in advance, you will have to repay any excess advance payment, or you may get a larger refund if you are entitled to more. It is important to tell your Marketplace about changes in your income or family size as they happen during 2014 because these changes will affect the amount of your credit.

#### *More Information*

- Find out more about the health care law and the Marketplace at [www.HealthCare.gov](http://www.HealthCare.gov).
- Find out more about the premium tax credit at [www.IRS.gov/aca](http://www.IRS.gov/aca).

### **The Small Business Health Care Tax Credit**

The Small Business Health Care Tax Credit helps small businesses and tax-exempt organizations pay for health care coverage they offer their employees.

A small employer is eligible for the credit if it has fewer than 25 employees who work full-time, or a combination of full-time and part-time. For example, two half-time employees equal one employee for purposes of the credit.

For 2013, the average annual wages of employees must be less than \$50,000, and the employer must pay a uniform percentage for all employees that is equal to at least 50% of the premium cost of the insurance coverage.

The maximum credit is 35 percent of premiums paid for small business employers and 25 percent of premiums paid for small tax-exempt employers such as charities.

If you are a small business employer who did not owe tax during the year, you can carry the credit back or forward to other tax years.

For small tax-exempt employers, the credit is refundable, so even if you have no taxable income, you may be eligible to receive the credit as a refund so long as it does not exceed your income tax withholding and Medicare tax liability.

#### *More information*

- Find out more about the small business health care tax credit at [IRS.gov/aca](http://IRS.gov/aca).
- The [Small Business Health Care Tax Credit Estimator](#) can help you find out whether you're eligible for the Small Business Health Care Credit and how much you might receive.
- Find out more about the health care law at [HealthCare.gov](http://HealthCare.gov).

#### **General Counsel Corner**

By Peter H. Gunst, Esquire

##### *Price-Fixing is Not Worth It*

( This article originally ran in 2012...we are running it again as it is still a very relevant topic!)

Recently, five Michigan service station dealers admitted guilt to criminal charges that they had fixed the street prices they charged consumers within a penny or two of each other on at least 5 separate days in February and March 2011. They were lucky to escape by paying fines of between \$10,000 and \$15,000 each.

Most states have laws that mimic the Sherman's Act's condemnation of price fixing, which they can enforce against local conspirators too small to be targets of the Justice Department or the Federal Trade Commission. These defendants fit that profile.

Under most if not all state antitrust laws price-fixing is a felony. Under Michigan's Antitrust Reform Act, the dealers could have faced up to two years in prison. Also, their businesses could have faced fines up to \$1,000,000 each.

Conviction for price-fixing can cause collateral damage as well. There is the risk that consumers can use the guilty plea as proof in civil cases demanding up to triple damages and attorneys' fees as well. In addition, under the Petroleum Marketing Practices Act, such criminal misconduct can constitute a ground for termination or nonrenewal of the franchise relationship.

To be found guilty of price-fixing, the state does not need to prove that dealers enter into an ironclad agreement to set prices at a specific level. An agreement can consist of a "nod and wink" among participants.

As in the Michigan, it is no defense that there was some discrepancy among the competitors' prices so long as there is some underlying agreement that affects pricing. Price-fixing agreements may consist of, for example, agreements to hold prices firm, to eliminate or reduce discounts or to maintain price differentials between different grades of product. The best defense is not to discuss retail pricing with your competitors at all.

Be sure your managers know about the danger and obey the law. Their actions can result in liability to your business. In these days, the climate of hostility towards gasoline pricing makes it an inviting target for aggressive state enforcement agencies.

Don't become a target; price-fixing isn't worth it.

#### **General Counsel Corner**

By Peter H. Gunst, Esquire

##### *A Shot In The Dark*

A customer filling up at a Circle K convenience store in Tallahassee, Florida was the unintended victim of a gunfight that broke out in the parking lot. He sued both Circle K and its gasoline supplier, Shell Oil, for negligence. A federal district court considered the sufficiency of his claim earlier this year in *Cain v. Shell Oil Co. et al.*

The court had no difficulty in finding that the wounded customer could not assert a claim against Shell, which was Circle K's franchisor as well as gasoline supplier. Like many courts before it, the district court decided that a mere franchise relationship is not a sufficient basis for holding a franchisor liable for its franchisee's negligence.

The customer, in arguing that the franchisor exercised sufficient control over the franchise premises to be held jointly liable, pointed to provisions in the franchise agreement imposing minimum operational standards on the franchisee. The court, however, while conceding that "these conditions may be interpreted to impose some control in the broadest sense over how the store operated," concluded that they did not give Shell control over the specific means utilized by the franchisee to satisfy the contractual standards.

More surprising was the court's treatment of the customer's claim against the franchisee. Circle K argued that, as a matter of law, the shooting was not foreseeable because the customer's injuries were caused by "a freakish and improbable chain of events" that were "utterly unpredictable in light of common human experiences."

Rejecting Circle K's claim to an absolute defense against liability, the court found that the circumstances were sufficient to permit a jury to decide whether Circle K should bear legal responsibility for its customer's injuries.

The court pointed out that the c-store was located in a high crime area, which was particularly dangerous late at night after the neighborhood bars closed.

Further, the Tallahassee police department had contacted Circle K to express concerns regarding the issue of crowd control at the store and its adjoining parking lot. The police department had requested and received permission from Circle K to "basically shut the store down" and "turn the lights off" when conditions were particularly bad, with the hope that this would discourage a crowd from gathering in the store's vicinity.

Although the police department had not acted on the evening of the incident, the store manager had been warned by an employee on duty of a gathering crowd, but had insisted that the lights remain on and the store remain open.

Based on these circumstances, the court concluded that the customer had "presented sufficient facts for a reasonable jury to find that the shooting was foreseeable and not merely a freakish, improbable, or extraordinary event."

The lesson appears to be clear. A c-store operator has a positive duty to take reasonable steps to avoid the risk of harm to its customers, even if that risk of harm is not obvious or readily ascertainable. It may not be sufficient to argue that a shot in the dark is either a "freakish" or "extraordinary" event.

### **Getty Realty Puts 47 Properties On The Market**

Getty Realty Corp. retained NRC Realty & Capital Advisors LLC to sell 47 retail properties in eight states.

The sale will include 16 gas stations, 29 commercial and retail properties formerly used as gas stations, and two industrial sites. The highest concentration of properties is in Massachusetts (21 sites), followed by New York (11) and Rhode Island (6). Many of the sites are currently being operated by licensees under month-to-month license agreements.

The 16 gas stations are located in a variety of urban and suburban markets in each of the eight states, which also include Pennsylvania, Connecticut, Illinois, Maine and North Carolina. All are fee-owned properties. These properties are being sold without a gas brand or fuel supply.

According to NRC Realty, most of the 29 commercial and retail properties are improved with operating or closed gas stations.

Also up for bid will be two industrial sites in Port Ewen, N.Y., and Providence, R.I. Both are former fuel distribution terminals and could potentially be redeveloped.

"These sites are very attractive for a variety of gasoline, automotive, retail and commercial and industrial uses," said Evan Gladstone, NRC's executive managing director. "A majority of the sites are located on high-traffic corners in mature neighborhoods and in small towns. Investors will also be interested in bidding on many of the locations, which have license agreements with operators."

The properties will be sold using NRC's "buy one, some or all" sealed bid process. Due-diligence packages are expected to be available in May, with a bid deadline of May 13.

### **Vermont Legislators Vote To Keep Tobacco Age at 18**

Lawmakers in the Vermont House of Representatives rejected a measure that would have hiked the legal age to buy tobacco to 21.

According to a report by The Associated Press, the Tuesday vote by the House Human Services Committee came after State Health Commissioner Dr. Harry Chen said he opposed the legislation because 18- to 20-year-olds are legally adults and should have the freedom to smoke.

Last month, state Rep. George Till (D-Jericho) tried to add an amendment to a bill seeking to reduce exposure to secondhand smoke that would have raised the age for buying tobacco products. He agreed to withdraw this amendment after Majority Leader Willem Jewett and Human Services Committee Chairwoman Ann Pugh agreed the committee would address the age increase in separate legislation, the AP reported.

State Rep. Anne Donahue (R-Northfield) said there was not enough time left in the legislative session, which is due to wrap up in early May, to consider what she called a "major policy change." Friday is the last day for getting most bills out of their committee of origin.

State Rep. Matt Trieber (D-Rockingham) made motions to reject two versions of the age increase, one of which would have exempted members of the military. The motion to reject the measure without the military exemption was approved 10-1; the motion to reject the version with the military exemption was passed 11-0.

Trieber said he opposed raising the age for buying tobacco products, but added that he could be persuaded to change his mind after hearing more committee testimony showing there is scientific data supporting such a move, according to the report.

### **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..

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## 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

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