

November 21, 2012

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WP-11-21-12

**WPMA OFFICES CLOSED FOR THANKSGIVING**

The WPMA offices will be closed Thursday, November 22 and Friday, November 23, 2012 for the Thanksgiving holiday. We wish everyone a very happy and safe Thanksgiving.

**PLAINTIFFS TO APPEAL SWIPE FEE SETTLEMENT**

Many of the named plaintiffs announced last week that they will appeal a federal court decision to grant preliminary approval to a settlement between retailers and Visa, MasterCard and several large banks. Class counsel representing the named plaintiffs reached the settlement with defendants in July. However, a majority of the named plaintiffs oppose the settlement, with an additional 1,200 merchants filing objections to it. The National Federation of Independent Businesses (NFIB) and the Public Interest Research Group (PIRG) each filed amicus briefs in support of the opposition.

Jeffrey Shinder, managing partner, Constantine Cannon LLC, counsel to the merchants objecting to the proposed settlement, said, "This settlement has fatal legal defects. We look forward to presenting the problems we see in this proposal to the Second Circuit Court of Appeals. The merchant community is deeply committed to reforms that bring transparency and competition to the broken electronic payments market. The volume and diversity of those objecting to this flawed proposal are remarkable and continues to grow."

**INCOME TAX DEDUCTIONS**

During the federal election campaigns there were several mentions about limiting income tax deductions as an alternative to raising rates. The Small Business Legislative Council (SBLC) took a look at deductions and reported the following:

Under the Congressional Budget and Impoundment Control Act of 1974, income tax deductions are defined as "expenditures which are revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."

What are the largest tax expenditures? According to the Tax Policy Center (for 2008 in \$billions):

Exclusion of employer contributions for medical insurance premiums and medical care	\$131
Net exclusion of pension contributions and earnings	117.7
Deductibility of mortgage interest on owner occupied homes	88.5
Accelerated depreciation of machinery and equipment	55.9
Deductibility of nonbusiness state and local taxes other than for owner occupied homes	49.1
Deductibility of charitable contributions	31.5
Deferral of income from controlled foreign corporations	30
Deductibility of state local property tax on owner occupied homes	29.1
Child credit	28.4

**IRS ISSUES LIMITED DYED DIESEL FUEL PENALTY WAIVER EXTENSION**

Due to continued fuel shortages caused by Hurricane Sandy, the [IRS today](#) issued a limited waiver extension of the prohibition against selling dyed diesel fuel for use in highway vehicles. Generally a penalty of \$10 per gallon is imposed on dyed diesel fuel found in the fuel tank of on-road vehicles operated by non-tax exempt purchasers. Together with the earlier EPA waiver extension of federal diesel fuel sulfur standards, the IRS waiver extension means that marketers may continue to sell dyed diesel fuel including dyed heating oil for use in highway vehicles until December 7, 2012 in the following areas only: **The State of New Jersey, the five boroughs of New York City (Manhattan, Queens, Staten Island, Brooklyn and the Bronx) as well as Westchester, Nassau, Rockland and Suffolk counties in New York State.** Note the new IRS waiver extension is geographically narrower than the earlier IRS dyed diesel fuel penalty waiver issued on November 2, 2012. The earlier 11/2/12 IRS waiver expires November 20, 2012 at midnight.

It is important to remember that this is **not** a tax waiver but a dyed penalty waiver. The IRS is requiring marketers to collect the 24.4 cpg federal diesel fuel excise tax on the sale of all dyed product to all purchasers, other than state and local governments, who intend to use the dyed fuel in a highway vehicle. The following conditions must be met in order for the penalty waiver to apply:

- The penalty waiver applies to any person that **sells or uses** dyed fuel for on-road use.
- The 24.4 cpg federal motor fuel excise tax must be collected on the sale of dyed fuel intended for on-road use from purchasers except state and local government entities.
- The tax is imposed by the **ultimate vendor** of the dyed fuel.
- The IRS will not impose penalties for failure to make semimonthly deposits of this tax.
- Petroleum marketers collecting the tax **are not required** to be registered with the IRS as an ultimate vendor in order to collect or remit the tax on the dyed fuel.
- Payment of the 24.4 federal motor fuel excise tax is made by ultimate vendors using IRS Form 720 Quarterly Excise Tax Return.

**Warning!** When a similar waiver was granted during Hurricane Katrina in 2005 many non exempt users demanded to purchase dyed diesel fuel intended for non-road use without the 24.4 cpg tax included. Claims of price gouging were incorrectly alleged against some marketers attempting to collect the tax. The 24.4 tax **MUST** be collected on dyed diesel sold to all on-road purchasers except state and local governments. Marketers are advised to keep a copy of the waiver with them to show purchasers that the IRS requires the tax be collected.

**Bottom Line:** Marketers may sell dyed diesel fuel including heating oil for on-road use in NJ, the five boroughs of New York City and in Westchester, Suffolk, Rockland and Nassau Counties in the State of New York. Marketers must collect the 24.4 cpg federal excise tax from all on-road users of dyed fuel except state and local government entities. Marketers must remit the tax on IRS form 720.



### 2013 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2013 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 19-21, 2013.

### MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2013

**February 27, 2013** – Utah (UPMRA) Day on Capitol Hill - Utah Capitol Building - Salt Lake City, Utah

**May 9-10, 2013** – NPM&CSA Big Dogs' Shootout – Red Rock Hotel & Casino – Las Vegas, Nevada

**June 4-6, 2013** - Montana (MPMCSA) Convention - Holiday Inn Grand - Billings, Montana

**June 17-20, 2013** - Washington (WOMA) Convention - Suncadia Lodge - Cle Elum, Washington

**July 31-August 2, 2013** - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, Idaho

**August 27-28, 2013** – New Mexico (NMPMA) Convention – Albuquerque Marriott Pyramid North, Albuquerque, NM

**September 12-13, 2013** - Utah (UPMRA) Convention - Zermatt Resort - Midway, UT

Petro Pete: ***“An optimist is a person who starts a new diet on Thanksgiving Day.”***

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