NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

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INSIDE THIS ISSUE

US CPI Rises 8.2% Year to Year in September, Despite Lower Gasoline Prices

Inflation is on the rise despite three months of declining gasoline prices and the Federal Reserve's substantial rate increases, the U.S. Bureau of Labor Statistics reported Thursday.

The Consumer Price Index for All Urban Consumers rose 0.4% in September on a seasonally adjusted basis after rising 0.1% in August and remaining flat in July. The CPI rose 8.2% from September 2021, though it was down slightly from 8.3% in August. After a double-digit increase in June, the gasoline price index fell 7.7% in July, 10.6% in August and 4.9% in September.

While declining gasoline prices tempered inflation, steep increases in shelter, food and medical care costs caused the CPI to spike.

The overall energy index fell 2.1% in September, though it was up 19.8% year to year. While gasoline prices declined 4.9% in September the gasoline price index is up 18.2% over the last 12 months. Fuel oil was down 2.7% in September, but up 58.1% year to year, electricity costs rose 0.4% in September and 15.5% year to year and natural gas utility prices were rose 2.9% in September and 33.1% from September 2021.

Inflation is top of mind for American consumers, according to a new national consumer survey from NACS. Consumers say they have become more price sensitive when buying groceries (88%) and buying gasoline (87%), cutting back on snacks and drinks (80%) and dining out less (74%). These reflect an across-the-board increase since the February survey when gas prices were about 20 cents lower, NACS said.

--Reporting by Donna Harris

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Gas Prices Move Higher Despite Decreased Demand

Fewer U.S. drivers are fueling up lately, yet the national average gas price rose 4 cents over the past week to reach $3.80 per gallon.

ne reason for the increase is worries over Russian oil production cuts that could affect global supplies. However, this rise in prices could be short-lived due to new COVID-19 restrictions in China that signal a potential economic slowdown for the top oil-consuming country in the world, AAA reported.

"The oil market, like the stock market, hates negative headlines, no matter how speculative," said Andrew Gross, AAA spokesperson. "And that is why we see the oil price back over $90 a barrel. More expensive oil usually leads to more expensive gasoline, but the recent COVID-related news from China may stem this increase."

The latest data from the U.S. Energy Information Administration (EIA) shows that gas demand saw a slight decrease from 8.93 million barrels per day to 8.66 million barrels per day last week, while total domestic gasoline stocks decreased by 1.3 million barrels to 206.6 million barrels. Tighter supply and fluctuating oil prices put upward pressure on gasoline prices, and prices at the pump could increase if supply remains tight alongside rising oil prices.

The current national average of $3.80 is 9 cents less than one month ago and 38 cents more than one year ago.

The largest weekly increases took place in Indiana (37 cents per gallon), Wisconsin (31 cents), Michigan (27 cents), Ohio (21 cents), Illinois (17 cents), Florida (16 cents), Kentucky (12 cents) and Delaware (10 cents).

The largest weekly decreases took place in Oregon (13 cents) and California (11 cents).

The top 10 least expensive markets are Georgia ($3.12 per gallon), Texas ($3.17), Mississippi ($3.20), Arkansas ($3.24), Louisiana ($3.26), Tennessee ($3.28), South Carolina ($3.28), Alabama ($3.30), North Carolina ($3.36) and Missouri ($3.36).

At the close of the formal trading session on Nov. 4, West Texas Intermediate rose by $4.44 to $92.61. Crude oil prices spiked at the end of the week after the dollar fell in value, while the price of oil rose after the EIA reported that total domestic crude stocks had declined by 3.1 million.

However, crude oil prices could face headwinds this week if market concerns regarding a possible recession persist, AAA reported. If economic growth stalls or reverses course, crude demand will likely follow alongside prices.

US Refinery Margins Plunge for Gasoline as Retailer Margins Surge

U.S. refined products traders have had an epiphany of sorts in November futures and spot markets.

Fears of whether there would be enough gasoline have been replaced by worries about too much motor fuel, as refiners ramp up runs so they can satisfy brisk domestic and international demand for diesel.

Wednesday is seeing particularly large drops for wholesale gasoline around the country. Selling was observed in spot markets on Monday and Tuesday, but gasoline is getting harshly dumped in some markets Monday after EIA showed a 2.2 million bbl inventory build and also recorded an increase in utilization with refiners processing just shy of 16.8 million b/d of crude and feedstock.

That rate is expected to swell further as large Gulf Coast refineries are restarted after turnarounds. But for now, it is sufficient and brings some 9.7 million to 9.8 million b/d of gasoline output to market each week. Given gasoline demand numbers that have averaged just 8.8 million b/d over the last four weeks, U.S. inventories of 207.9 million bbl appear ample and likely to build further over the next 90 days.

Some markets even find gasoline as a loss leader for refiners who are locked into using light sweet crude. Example: Chicago CBOB and RBOB are trading a nearly 30cts/gal off CME RBOB quotes, or about $2.195/gal at midday Wednesday. That price works out to $92.19/bbl versus a West Texas Intermediate quote just above $85/bbl. But merchant refiners currently incur a Renewable Volume Obligation quote of $8.82/bbl if they don't blend adequate amounts of biofuel. Hence, the gasoline crack for Great Lakes refiners is splayed with red ink for some processors.

Similarly, there has been aggressive selling at the U.S. Gulf Coast, Group 3 and Western markets this morning. Gulf Coast gasoline was barely above $2.24/gal, reflecting a price for blendstock that was just over $94/bbl. The Group 3 market saw suboctane gasoline fetch just $2.23/gal.

Almost all of the spot numbers for gasoline east of the Rockies are now as low as they have been since Russia's invasion of Ukraine in February.

The West Coast has seen even more aggressive selling. Whether the venue is Los Angeles or San Francisco, prices this morning are 20-22cts/gal lower. The Los Angeles spot price for CARBOB of $2.838/gal is more than $1.60/gal lower than values on the first business day of October. Similarly, Pacific Northwest numbers of $2.44/gal now find gasoline there trading at a 5cts/gal discount to futures. Most of 2022 has seen that market trade at a premium.

For gasoline retailers, this week's movement in wholesale prices represents an early Christmas present. OPIS MarginPro tracks U.S. rack-to-retail numbers and showed an average gross gasoline margin of 58.5cts/gal this morning, up 15cts/gal from last week and up 23.7cts/gal from last year. Most margins Wednesday are expanding by a further 5-20cts/gal.

Footnote: The year-to-date average price for the U.S. works out to $4.048/gal, according to the OPIS/AAA database. If prices average $3.66/gal for the remainder of 2022, the annual average will top $4/gal. That no longer appears to be a certainty.

--Reporting by OPIS Staff

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Some Petroleum Companies Notify Customers on Superfund Tax in 2023

Some petroleum companies have already notified customers that they will feature a line item on 2023 invoices that looks to collect the 16.4cts/bbl Superfund tax charge on refined products. The levy goes into effect in 2023 as it was included as the Inflation Reduction Act which was signed into law in mid-August.

Most companies are likely to implement the charge as a line item, but some may elect to build the charge into the rack price and OPIS will delineate the options that firms choose.

Refiners are the only parties liable for the payment of the Superfund tax and most have chosen to use the line-item approach in the past.

Energy Marketers of America (EMA) also advises marketers not to break out the Superfund tax as a line item since tax exempt purchasers typically object to any charge listed as a "tax." EMA notes that there are no downstream exemptions from the Superfund tax.

The tax is only imposed on products that are derived from crude. Downstream blenders of ethanol, biodiesel or other non-crude derived fuels are not liable for the tax.

--Reporting by Tom Kloza

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API, RFA Agree on Legislative Plan to Lift E15 Sale Restrictions: Sources

The American Petroleum Institute and the Renewable Fuels Association have agreed on proposed legislative language that could lift existing restrictions on the year-round sale of E15 in the U.S., sources said Wednesday at the Society of Independent Gasoline Marketers of America's annual conference in Los Angeles.

Speaking at the conference's legislative issues briefing, the sources said that if other industry groups sign on to the proposal, then it could increase chances for congressional action and eliminate the need for a patchwork solution proposed last spring by a number of Midwest governors.

The Biden administration in April said it would issue a series of emergency RVP waivers to permit the unrestricted sale of E15 during the high-demand summer driving season in a bid to expand fuel supply and help bring down gasoline prices that shot higher after Russia invaded Ukraine in February.

The White House's move came a day after nine Midwest governors asked EPA to use its authority under the Clean Air Act to issue regulations capping the RVP of E10 and E15 at 9 psi for the summer driving season. The request, which would put both fuels on an equal footing at the retail level, would require gasoline suppliers to provide a lower-RVP blendstock in the states that had made the request to EPA.

Because not all Midwest states signed onto the request, fuel market sources said the petition, if granted, could create logistical problems for the regional (PADD 2) market, particularly for pipelines, which could be forced to move different CBOB RVP specifications during the summer.

EPA has yet to act on the governors' request, but sources say they expect a decision soon.

Robert White, RFA's vice president of industry relations, told SIGMA conference attendees that absent a national solution, it's likely the Midwest governors will move forward with their plan to opt out of the E10 RVP waiver next summer.

White added that two independent studies commissioned by RFA showed "that the governors' approach would have no meaningful impact on gas prices or fuel supply logistics in the region."

Earlier efforts to lift restrictions on the sale of E15 have failed to gain ground in Congress. Two bills introduced in the House and Senate in March would have altered the provision, but neither has moved out of committee, in part because of opposition from oil state members.

Neither API nor RFA could be reached for immediate comment, but an ethanol industry source confirmed that the two organizations, as well as several regional groups, have reached an agreement.

--Reporting by Rachel Stroud-Goodrich and Patrick Newkumet

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Expected Rise in Thanksgiving Travel Comes Amid High Margins, Lagging Demand

The number of people taking to the road this Thanksgiving in the U.S. is expected to rise slightly from last year but will likely remain more than 2.5% below pre-pandemic levels seen in 2019, AAA said Tuesday.

The auto agency expects 48.7 million people to travel by automobile between Wednesday, Nov. 23 and Sunday, Nov. 27 this Thanksgiving season, an increase of 200,000 from the 48.5 million who drove to their holiday destination last year.But the expected number is still 1.2 million lower than the 49.9 million who drove during the holiday in 2019, AAA said.

The expected increase in road traffic comes as AAA is forecasting a 1.5% year-to-year increase in all types of travel during the holiday period. The agency expects 4.51 million Americans to travel by air this Thanksgiving, up 7.9% from last year but still below the 4.58 million who flew during the same period in 2019. The agency expects 1.43 million to travel by bus, train, or cruise ship over the holiday, a 23.5% increase over last year but 3.92% below 2019 levels.

AAA started tracking Thanksgiving travel in 2000, and 2005 and 2019 have been the busiest years so far for travel during the holiday.

The increase in motorists taking to the roads comes as the average U.S. retail price of gasoline is $3.7586/gal, a 36.2cts/gal -- or a 10.6% -- increase from prices last Thanksgiving. The increase in travel comes as U.S. retailers are seeing a stretch of strong gross rack-to-retail margins. The U.S. average margin was 54.5cts/gal Tuesday and averaged 45.3cts/gal last week. Since Oct. 15, U.S. margins have averaged 46.5cts/gal, according to OPIS MarginPro data. U.S. margins averaged 31.6cts/gal during the Wednesday to Sunday holiday travel period last Thanksgiving, OPIS data show.

he expected rise in holiday travel also comes as U.S. gasoline sales in 2022 are 4.6% behind sales seen during the first 10 months of 2021, according to OPIS DemandPro data. The most recent OPIS data show that U.S. gas stations sold an average 16,656 gallons during the week ending Nov. 5.

That compares to an average 17,259 gallons during Thanksgiving week 2021, according to OPIS data.

--Reporting by Steve Cronin

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EVs Fare Poorly in Consumer Reports Reliability Ranking

The latest generation of electric vehicles did not fare well in Consumer Reports' latest reliability survey, with the magazine finding a growing number of problems with EV-specific systems, such as battery packs, charging systems and drive motors.

The problems placed electric vehicles second on the list of least-reliable automotive category, behind only full-sized pickup trucks, which was ranked the least reliable category.

Of the 24 brands Consumer Reports ranked for reliability, Tesla - which sells only electric vehicles - ranked 19th. The magazine's 10 least reliable car models included the Ford F-150 Hybrid, rated least reliable, the Hyundai Kona Electric, ranked second least reliable and the Chevy Bolt, which placed sixth on the list. While specific rankings weren't available for all car models Tuesday, Consumer Affairs said the Ford Mustang Mach-E and Volkswagen ID.4 alsohave below-average reliability ratings.

Consumer Reports also found problems with plug-in hybrids, which suffered the same problems with specialized EV systems. The Toyota Prius Prime and RAV4 Prime have lower reliability scores than their hybrid and, in the case of the RAV4, conventional siblings. The plug-in Chrysler Pacifica Hybrid is one of the least reliable vehicles in the survey, according to the magazine.

"In previous years, EVs have had high rates of problems with infotainment system display screens and other in-car electronics, just as many conventional models do," said Jake Fisher, Consumer Reports' senior director of auto testing. "This year, issues with those systems remain, while problems specifically with EV-related components are now being reported."

The problems with EVs come as auto companies expand their electric vehicle offerings and new models experience teething pains. Meanwhile, hybrid vehicles - many models of which have been on the road for lengthy periods - ranked well for reliability, with the magazine noting that "most hybrids have reliability that is as good as or better than their non-hybrid counterparts."

The magazine found that reliability is just one of many pluses consumers appreciate about hybrids

"They're more fuel-efficient, and can be less expensive, than their non-hybrid cousins," said Fisher.

The most recent survey found that sedans remain the most reliable type of vehicle on the road, due in part to many models having been on the road for lengthy periods, allowing manufacturers to correct problems. Sedans also lack what Consumer Reports called "problem-prone features," such as rear-seat entertainment systems and the power sliding doors offered on some minivans. SUVs were the second-most reliable type of vehicle, followed by minivans and then pickup trucks.

Toyota, Lexus, BMW, Mazda and Honda were ranked as the top five most reliable brands in the survey while Mercedes-Benz, Jeep, Volkswagen, GMC and Chevrolet were ranked as the five least-reliable brands. Lincoln, which h ranked 10th, was the top U.S. domestic brand. Alfa Romeo, Chrysler, Dodge, Fiat, Infiniti, Jaguar, Land Rover, Maserati, Mini, Mitsubishi, Polestar, Porsche, and Rivian were not ranked as Consumer Reports said it either had insufficient data or the brands manufacture too few models to be included in the rankings.

--Reporting by Steve Cronin

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IMR Inc. Releases Research Insights on the U.S. Household Perception of Trades as a Career Path

- *U.S. facing increasing shortage of skilled workers in the trades*
- *42.6% of households surveyed said they would be extremely likely to recommend the trades as a career path if their child or a family member were considering it*
- *64.6% of households with a family member or friend working in the trades were more likely to recommend the trades as a career path option to their child than those that do not have a family member or friend working in the trades (38.5%).*
- *Households reported 33.5% of children were most seriously considering a four-year college degree while 33.8% planned to enter the workforce immediately, 84.5% of which in a trade career*

IMR Inc., the industry’s leading full-service automotive market research firm, has released its latest Insights highlighting the perception of the trades as a career path within U.S. households. This study was conducted by surveying 25,000 nationally representative households during the first quarter of each year since 2020.

The U.S. workforce is struggling to fill a massive gap in the skilled trades industry right now, and the issue may possibly worsen over the next ten years. According to the U.S. Bureau of Labor Statistics, there are millions of skilled trade job vacancies, and 39% of households surveyed fully agree that there are unfilled positions in the automotive service industry, providing high job security for automotive technicians. Men who know someone in the trades are even more likely to agree than others.

Of the households discussing career options with a child, 45.5% said they were discussing a four-year college degree as an option (amongst other options) and 45.6% of those having that conversation were recommending the four-year college degree option to their child. However, when asked what option their child was most seriously considering, 33.5% said four-year college degree while 33.8% said entering the workforce immediately. When asked if their child intended to pursue a job in the trades were they to enter the workforce immediately, 84.5% said yes.

Overall, 42.6% of households surveyed said they would be extremely likely to recommend the trades as a career path if their child or a family member were considering it. This number is up from 2020 where only 39% said they would make that recommendation. Households with a family member or friend working in the trades were more likely to recommend that career path option to their child at 64.6%. If the household did not have a family member or friend working in the trades, only 38.5% of those surveyed would make the recommendation.

Amongst all households surveyed – whether discussing career options with a child or not – the top three trades recommended were electrician, HVAC installation/repair and aircraft maintenance/repair. Automotive technician was ranked as the fifth most common response. However, if the household was discussing career options with a child, automotive technician ranked third.

Rural households (61.6%) and urban households (52.2%) are more likely to recommend the trades than those households in the suburbs (41.6%). Regardless of household location, there is some recognition of the cost differential between automotive technician training and a traditional college education. 41% fully agree that the cost of completing the required education to become an automotive technician is significantly less than the cost of a traditional college education, but the awareness of this gap is greater amongst males, higher earners and those with more educational experience.

While shops reported that the most important trait they look for in a technician is being analytical and a problem solver, less than half of households surveyed (47%) fully agree that STEM skills are needed to become an automotive technician.

When asked about how automotive technicians are portrayed, more than a third of household respondents believe technicians are often portrayed negatively. 17% of respondents believe being an automotive technician is a job, not a career, while 44% disagree with the statement. 42% of households fully agree that income earning opportunities for automotive technicians can be equal to or greater than other careers that require a four-year college degree, with younger generations more likely to agree with this statement than older generations

US Commercial Driver Shortage
Remains Near Record High: ATA

The U.S. trucking industry still faces a commercial driver shortage, though the shortage eased slightly this year, the American Trucking Associations reported in a news release Tuesday.

The trade group estimates the industry is short about 78,000 drivers, down from 2021's record of more than 81,000. This year's estimate is still "extremely high historically," said ATA's Chief Economist Bob Costello, in reporting the data.

The shortage is determined by calculating the difference between the number of drivers employed and the optimal number of drivers based on freight demand.

"Rising pay and other factors have helped the industry attract new drivers," Costello said. "However, that influx is still not enough to make a substantive difference in the shortage, particularly in the long-haul, for-hire truckload sector."

--Reporting by Donna Harris

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American Trucking Associations Victorious
in Truck-Only Toll Fight

On September 21, 2022, the United States District Court for the District of Rhode Island ruled that the state of Rhode Island's truck-only tolling plan was unconstitutional.

The lawsuit came as the result of the American Trucking Associations (ATA) and three motor carriers filing a lawsuit against the state of Rhode Island. The state placed tolls on existing bridges which had been found structurally deficient.

These tolls were intended to raise revenue from trucks operating in interstate commerce as the state found that tractor trailers contributed the majority of the wear and tear on the state's bridges.

SSDA-AT believes that investment in our nation's roads and bridges is essential for the safe and efficient movement of passengers and freight, but these investments must be made soundly, and they should not penalize one user over another.

The truck only tolling plan from Rhode Island discriminated against trucks, and if it had won its lawsuit, it would have incentivized other states to follow suit.

Marathon Petroleum Launches Mystery
Shopper Pilot at US Gas Stations

Marathon Petroleum Corp. has launched a pilot of a new mystery shopper program at 1,500 gas stations across the U.S., the company told jobbers and dealers in an email Wednesday.

The major has partnered with Ipsos Channel Performance, a worldwide research company, to develop the Marathon Insight program, which will monitor the retail\customer experience at Marathon, ARCO and Tesoro stations.

The pilot takes place in the fourth quarter, and the program is expected to go live in January, Marathon said. The test involves each branded jobber in all states where Marathon does business. The pilot stations will not be graded or charged for the mystery shopper evaluations while the program is under development.

"Things are progressing very well," the company said in its email.

--Reporting by Donna Harris

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Citgo Doubles Rewards for US Stations With High Mystery Shop Scores

Citgo is taking a carrot-and-stick approach to coax better performance out of branded stations on its mystery shopper evaluations.

In January, the major introduced a stricter grading system for U.S. gas stations after mystery shopper inspections revealed a "large number" of brand violations. However, for its fourth-quarter mystery shops that started in October, Citgo is doubling the reward for stations that score 97% or higher on the evaluations, the company told branded wholesalers in an October bulletin. The gift cards can be used to reward store employees for providing good customer service and keeping the stations well-maintained.

Instead of $150 in gift cards, stations meeting the target score get $300. The doubled incentive is in effect for a "limited time." As usual, the sites also get a letter of commendation and a performance certificate to display in the store.

Citgo's mystery shopper survey generally includes a bonus question worth two points. This time, the bonus question is: "Did the customer service representative or other station personnel suggest you use the Club Citgo app for discounts, pay with your Citgo Rewards Card or offer an application to you?"

After the COVID-19 pandemic started, major oil brands suspended or relaxed mystery shopper inspections, which are designed to enforce brand standards. This year, however, as the pandemic has waned, some brands toughened enforcement.

--Reporting by Donna Harris

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Court Pushes Back Timeline for Graphic Cigarette Warning Labels

Cigarette packaging and advertisements will not feature graphic health warnings until early November 2023.

The U.S. District Court for the Eastern District of Texas issued an order postponing the effective date of the Food and Drug Administration's (FDA) graphic cigarette health warning regulation by another 31 days from Oct. 6, 2023 to Nov. 6, 2023.

The court's order, which was issued on Nov. 7, also pushes back the preferred filing deadline for manufacturers and retailers to submit cigarette health warning rotational plans to the FDA by 31 days, according to the National Association of Tobacco Outlets (NATO).

Each manufacturer and retailer that creates its own cigarette advertisements is required to file a plan with the FDA that sets forth the schedule for rotating the eleven graphic cigarette health warnings on cigarette advertisements. The preferred filing deadline for cigarette health warning rotational plans should now be Jan. 6, 2023, the association said.

According to NATO, the court expects to issue its ruling on the cross-motions for summary judgment in the case within 31 days.

The FDA issued its final rule on the warnings, which feature a combination of text and images depicting some of the health risks of cigarette smoking, in March 2020. However, implementation has been postponed multiple times after several tobacco companies asked for the date to be moved back.

The U.S. District Court for the Eastern District of Texas last postponed the date on Aug. 20, setting the previous Oct. 6, 2023 deadline.

The warnings will be required to appear on the top 50 percent of the front and back of cigarette packages and at least 20 percent of the top of ads. In addition, the warnings must be randomly and equally displayed and distributed on cigarette packages and rotated quarterly in cigarette advertisements, as Convenience Store News previously reported.

There are 11 required warnings. They are:

- WARNING: Tobacco smoke can harm your children.
- WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.
- WARNING: Smoking causes head and neck cancer.
- WARNING: Smoking causes bladder cancer, which can lead to bloody urine.
- WARNING: Smoking during pregnancy stunts fetal growth.
- WARNING: Smoking can cause heart disease and strokes by clogging arteries.
- WARNING: Smoking causes COPD, a lung disease that can be fatal.
- WARNING: Smoking reduces blood flow, which can cause erectile dysfunction.
- WARNING: Smoking reduces blood flow to the limbs, which can require amputation.
- WARNING: Smoking causes type 2 diabetes, which raises blood sugar.
- WARNING: Smoking causes cataracts, which can lead to blindness.

California Voters Approve Flavored Tobacco Ban

Two years after California officials moved to enact a statewide ban on the sale of flavored tobacco products, the voters have overwhelmingly spoken in favor of the legislation.

On Nov. 8, California voters approved Proposition 31, with roughly 62.3 percent voting yes and 37.7 percent voting against the measure. Proposition 31 upholds the state law barring the sale of flavored tobacco, including menthol. It also charges a $250 penalty against stores and vending machine owners for each violation.

On Aug. 28, 2020, Gov. Gavin Newsom signed the legislation into law after the California Senate voted 34-0 in favor of ban, followed by a similar 58-1 vote in the California Assembly, as Convenience Store News reported.

However, two months later the California Coalition for Fairness submitted more than 1 million signatures from registered voters to the Secretary of State's office in a bid to get a veto referendum to overturn the legislation onto the November 2022 ballot.

Originally set to go into effect on Jan. 1, 2021, the legislation has been stalled until now.

Tobacco companies, including R.J. Reynolds Tobacco Co. and Philip Morris USA, were opposed to the bill. The state's Republican party also opposed the ban, saying it would lead to a loss in tax revenue. The independent Legislative Analyst’s Office estimated it could cost the state tens of millions of dollars to around $100 million annually, according to The Associated Press.

Proponents of the legislation contend banning the sale of flavored tobacco products helps reduce underage use of tobacco products.

"The message from this vote is unmistakable: It's time for policymakers at every level to stop the tobacco industry from using flavored, nicotine-loaded products to addict another generation of kids. It's also time to end the industry's predatory targeting of Black and other communities with menthol cigarettes, which has had a devastating toll on Black lives and is a major contributor to health disparities," said Matthew L. Myers, president, Campaign for Tobacco-Free Kids.

California is the second state to ban the sale of flavored tobacco products. A Massachusetts statewide ban on the sale of all flavored tobacco products — including menthol — went into effect on Monday, June 1, 2020. Gov. Charlie Baker signed the ban into law in November 2019.

Tobacco Companies Challenge
California's Flavored Tobacco Ban

Legislation prohibiting the sale of flavored tobacco products statewide is now facing a possible courtroom battle, one day after it faced a ballot box battle. California voters overwhelmingly approved Proposition 31 on Nov 8. With more than 63 percent of the vote, Proposition 31 upholds the state law barring the sale of flavored tobacco, including menthol. Gov. Gavin Newsom signed the legislation into law on Aug. 28, 2020 and it was set to go into effect on Jan. 1, 2021 before a petition to place it on the ballot was filed.

Following this week's election results, R.J. Reynolds and other tobacco companies filed a lawsuit against California, according to Courthouse News Service.

Tobacco companies have already sued once over California's flavor ban in 2021. A federal judge dismissed the suit, telling the plaintiffs to wait for the voters to weigh in before suing, the news outlet reported.

"The referendum has now occurred and the injury plaintiffs face is no longer theoretical, but concrete and imminent," the complaint reads. The ban is set to go into effect no later than Dec. 21, unless a judge agrees to intervene.

In their suit, the tobacco companies argue that the federal Family Smoking Prevention and Tobacco Control Act (TCA) of 2009, allows states and municipalities to regulate tobacco products, but not to ban their use or sale.

"The ban falls under the TCA's express preemption clause, 'which preempts 'any [state] requirement' that is 'different from, or in addition to,' a federal requirement about a tobacco product standard," the suit reads. "A flavor ban is a paradigmatic tobacco product standard."

R.J. Reynolds used the same argument when it sued in 2020 to block Los Angeles County's ban on flavored tobacco. The suit was dismissed, a move that was upheld by the Ninth Circuit Court of Appeals, in a 2-1 split decision, in March 2022, according to the report.

FDA Issues First Marketing Decision
on Menthol Vapor Products

The Food and Drug Administration (FDA) issued marketing denial orders (MDOs) for several menthol-flavored electronic cigarette products currently marketed by Logic Technology Development LLC.

The MDOs include the Logic Pro Menthol e-Liquid Package and Logic Power Menthol e-Liquid Package, which are currently on the market. As a result, the company must not market or distribute these products in the United States or risk enforcement action by the FDA.

These are the first menthol e-cigarette products to receive a marketing decision based on a full scientific review from the FDA.

“Ensuring new tobacco products undergo premarket evaluation is a critical part of the FDA’s work to reduce tobacco-related disease and death,” said Brian King, director of the FDA’s Center for Tobacco Products. “We remain committed to evaluating new tobacco products based on a public health standard that considers the risks and benefits of the tobacco product to the population as a whole.”

After reviewing the Logic's premarket tobacco product applications (PMTAs), the FDA determined that the applications lacked sufficient evidence to demonstrate that permitting the marketing of the products would be appropriate for the protection of the public health, the applicable standard legally required by the 2009 Family Smoking Prevention and Tobacco Control Act.

According to the agency, the evidence provided within PMTAs does not demonstrate that these menthol-flavored e-cigarettes are more effective in promoting complete switching or significant cigarette use reduction relative to tobacco-flavored e-cigarettes among adult smokers.

Logic may resubmit applications or submit new applications to address the deficiencies for the products that are subject to these MDOs.

The MDO letter that Logic received on Oct 26 is not limited to the two products named above; in general, the FDA publicly names only products that the applicant is marketing to avoid potential disclosure of confidential commercial information.

In March, the FDA authorized several tobacco-flavored e-cigarette products from the company under the Logic Vapeleaf, Logic Power and Logic Pro brands, including devices.

Altria Increases Cigarette List Prices

Altria Group Inc. is raising the list prices on its cigarette brands for the third time this year.

According to Bonnie Herzog, managing director at Goldman Sachs, the tobacco company increased its cigarette list price on Marlboro, Chesterfield, Basic, L&M and L&M Simple Tobacco by 15 cents. In addition, it raised the list price on Benson & Hedges, Benson & Hedges Menthol Green, Merit, Nat's, Parliament and Virginia Slims by 20 cents.

The price increases are effective on Oct. 16 and follows Altria's 15-cent-per-pack hike in July and British American Tobacco's (BAT) price increase in late August. BAT's changes ranged from 13 cents to 25 cents across all its brands.

Altria's previous Manufacturer Supported Off-Invoice promotion for all Marlboro and Basic SKUs in select states remains unchanged, Herzog added.

"Broadly this price increase doesn't come as a surprise and we believe Altria has become more sophisticated and targeted with its pricing strategies as well as promotional spending to offset these more frequent list price increases, especially for price sensitive consumers," she said.

"Although Altria's net price realization has been robust, up high-single digits over the last few years, we expect it to moderate a bit this year given pressures on the low-income consumer, increased risk from downtrading pressures and a wide relative price gap between Marlboro and the lowest effective cigarette on the market to approximately 38 percent in the second quarter of 2022," Herzog added, pointing out this is vs. the roughly 30 percent historical average.

She noted Goldman Sachs will be "watching to see whether deep discount cigarette manufacturers also move on price. If they don't, the relative price gap could widen further."

According to Herzog, there is increased risk of potential downtrading — especially given elevate gas prices — but brands like Marlboro with "a very loyal customer base and strong/effective promotions should be able to keep those consumers within the franchise."

Richmond-based Altria's wholly owned subsidiaries include manufacturers of both combustible and smoke-free products, including Philip Morris USA Inc., John Middleton Co., U.S. Smokeless Tobacco Co. LLC and Helix Innovations LLC.

Your Inspection License May be Worth Money

Depending on where you are located, it may be possible to sell your license. Before merely turning it in, contact the association for further information.

DMV Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver's license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 518-452-4367

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NYVIP MESSAGE No. 279

DATE: **NOVEMBER 21, 2022**

TO: **ALL INSPECTION STATIONS**

FROM: **NYS DEPARTMENT OF MOTOR VEHICLES**

SUBJECT: **2024 STICKER ORDERING and NYVIP3 UPDATE**

****PLEASE PRINT A COPY OF THIS MESSAGE AND DELIVER IT TO THE STATION OWNER AND/OR MANAGER. ****

Inspection stickers with an expiration year of 2024 are now available to order.

HOW TO ORDER STICKERS:

To order stickers on the NYS DMV website go to

http://dmv.ny.gov/sticker/default.html

Consistent with normal practice, it is each inspection station's responsibility to order next year's stickers promptly so that you have proper supply on hand by January 1, 2023. Sticker orders are processed in the order received. Please allow 3-4 weeks for processing.

The last day 2023 expiring sticker orders will be processed by DMV is December 22, 2022. Please submit your 2023 expiring sticker orders prior to this date.

Please note: these stickers will not be compatible with the NYVIP3 program. Any remaining stickers can be returned for credit once you begin using your NYVIP3 equipment. Please see below for additional information on NYVIP3.

If you have questions regarding your sticker order, please contact Sticker Issuance at (518) 474-2398.

NYVIP3 Update

Initial phase one beta testing is currently underway. (As a reminder, phase one stations include official diesel (opacity) inspection stations and those that haven't utilized NYVIP in the past (safety only).)

Production beta testing utilizing the new print on demand inspection sticker is scheduled to begin mid-December with full phase one rollout scheduled for mid-January.

Phase two beta testing is also underway. (As a reminder, phase two stations will include all those that currently conduct inspections with a NYVIP2 computerized vehicle inspection system (CVIS).)

Phase two equipment orders must be submitted ASAP and shipping will begin this spring. Further information about phase two will be shared in early 2023.

Any station (phase one or two) that has not yet ordered equipment must proceed to WWW.NYVIP3.COM to register and complete your order with Opus Inspection Inc. as soon as possible. If you do not register and place an equipment order, you will be unable to meet the requirements to maintain a New York State vehicle inspection station license.

NYVIP MESSAGE

DATE: 11/22/2022

TO: ALL EMISSIONS INSPECTION STATIONS

FROM: NYS DEPT. OF MOTOR VEHICLES

SUBJECT: NYVIP3 EQUIPMENT ORDERING REQUIREMENT REMINDER

*****PLEASE BRING THIS MESSAGE TO THE ATTENTION OF THE STATION OWNER AND/OR MANAGER*****

This is another reminder of upcoming changes to the New York Vehicle Inspection Program (NYVIP) and the requirements to continue participating as an inspection station.

As previously advised in NYVIP Message #278 issued May 26, 2022, NYVIP3 will require all inspection stations to purchase a new computerized vehicle inspection system (CVIS). You have not yet ordered such equipment, which is necessary to continue participation as a NYS licensed inspection station. As such, you must proceed to WWW.NYVIP3.COM to register and complete your equipment order with Opus Inspection, Inc. (Opus) now.

To order your NYVIP3 equipment, the following information will be required:

1) Facility license number
2) Facility contact information
3) Owner or manager contact information
4) Payment method information

NOTICE:
Inspection stations receiving this message that do not register and place an equipment order risk being unable to meet the requirements to maintain a New York State vehicle inspection station license and conduct vehicle inspections.

For further information, email Opus Inspection at NYVIP3Info@Opusinspection.com. Please include your name, phone number, email address, and facility number with your question(s), or call the DMV Office of Clean Air at (518) 474-0597 and select Option #4.

IRS Provides Tax Inflation Adjustments for Tax Year 2023

The Internal Revenue Service today announced the tax year 2023 annual inflation adjustments for more than 60 tax provisions, including the tax rate schedules and other tax changes. Revenue Procedure 2022-38 provides details about these annual adjustments.

New for 2023

The Inflation Reduction Act extended certain energy related tax breaks and indexed for inflation the energy efficient commercial buildings deduction beginning with tax year 2023. For tax year 2023, the applicable dollar value used to determine the maximum allowance of the deduction is $0.54 increased (but not above $1.07) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent. The applicable dollar value used to determine the increased deduction amount for certain property is $2.68 increased (but not above $5.36) by $0.11 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

Highlights of changes in Revenue Procedure 2021-38:

The tax year 2023 adjustments described below generally apply to tax returns filed in 2024.
The tax items for tax year 2023 of greatest interest to most taxpayers include the following dollar amounts:

1. The standard deduction for married couples filing jointly for tax year 2023 rises to $27,700 up $1,800 from the prior year. For single taxpayers and married individuals filing separately, the standard deduction rises to $13,850 for 2023, up $900, and for heads of households, the standard deduction will be $20,800 for tax year 2023, up $1,400 from the amount for tax year 2022.
2. Marginal Rates: For tax year 2023, the top tax rate remains 37% for individual single taxpayers with incomes greater than $578,125 ($693,750 for married couples filing jointly).

The other rates are:

- 35% for incomes over $231,250 ($462,500 for married couples filing jointly);
- 32% for incomes over $182,100 ($364,200 for married couples filing jointly);
- 24% for incomes over $95,375 ($190,750 for married couples filing jointly);
- 22% for incomes over $44,725 ($89,450 for married couples filing jointly);
- 12% for incomes over $11,000 ($22,000 for married couples filing jointly).

1. The lowest rate is 10% for incomes of single individuals with incomes of $11,000 or less ($22,000 for married couples filing jointly).
2. The Alternative Minimum Tax exemption amount for tax year 2023 is $81,300 and begins to phase out at $578,150 ($126,500 for married couples filing jointly for whom the exemption begins to phase out at $1,156,300). The 2022 exemption amount was $75,900 and began to phase out at $539,900 ($118,100 for married couples filing jointly for whom the exemption began to phase out at $1,079,800).
3. The tax year 2023 maximum Earned Income Tax Credit amount is $7,430 for qualifying taxpayers who have three or more qualifying children, up from $6,935 for tax year 2022. The revenue procedure contains a table providing maximum EITC amount for other categories, income thresholds and phase-outs.
4. For tax year 2023, the monthly limitation for the qualified transportation fringe benefit and the monthly limitation for qualified parking increases to $300, up $20 from the limit for 2022.

5. For the taxable years beginning in 2023, the dollar limitation for employee salary reductions for contributions to health flexible spending arrangements increases to $3,050. For cafeteria plans that permit the carryover of unused amounts, the maximum carryover amount is $610, an increase of $40 from taxable years beginning in 2022.
6. For tax year 2023, participants who have self-only coverage in a Medical Savings Account, the plan must have an annual deductible that is not less than $2,650, up $200 from tax year 2022; but not more than $3,950, an increase of $250 from tax year 2022. For self-only coverage, the maximum out-of-pocket expense amount is $5,300, up $350 from 2022. For tax year 2023, for family coverage, the annual deductible is not less than $5,300, up from $4,950 for 2022; however, the deductible cannot be more than $7,900, up $500 from the limit for tax year 2022. For family coverage, the out-of-pocket expense limit is $9,650 for tax year 2023, an increase of $600 from tax year 2022.
7. For tax year 2023, the foreign earned income exclusion is $120,000 up from $112,000 for tax year 2022.
8. Estates of decedents who die during 2023 have a basic exclusion amount of $12,920,000, up from a total of $12,060,000 for estates of decedents who died in 2022.
9. The annual exclusion for gifts increases to $17,000 for calendar year 2023, up from $16,000 for calendar year 2021.
10. The maximum credit allowed for adoptions for tax year 2023 is the amount of qualified adoption expenses up to $15,950, up from $14,890 for 2022

Items unaffected by indexing:
By statute, certain items that were indexed for inflation in the past are currently not adjusted.

1. The personal exemption for tax year 2023 remains at 0, as it was for 2022, this elimination of the personal exemption was a provision in the Tax Cuts and Jobs Act.
2. For 2023, as in 2022, 2021, 2020, 2019 and 2018, there is no limitation on itemized deductions, as that limitation was eliminated by the Tax Cuts and Jobs Act.
3. The modified adjusted gross income amount used by joint filers to determine the reduction in the Lifetime Learning Credit provided in § 25A(d)(2) is not adjusted for inflation for taxable years beginning after December 31, 2020. The Lifetime Learning Credit is phased out for taxpayers with modified adjusted gross income in excess of $80,000 ($160,000 for joint returns).

Employers Warned to Beware of Third Parties Promoting Improper Employee Retention Credit Claims

The Internal Revenue Service warned employers to be wary of third parties who are advising them to claim the Employee Retention Credit (ERC) when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for and computation of the credit.

These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.
If the business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

Businesses are encouraged to be cautious of advertised schemes and direct solicitations promising tax savings that are too good to be true. Taxpayers are always responsible for the information reported on their tax returns. Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.

What is the ERC?

The ERC is a refundable tax credit designed for businesses who continued paying employees while shutdown due to the COVID-19 pandemic or had significant declines in gross receipts from March 13, 2020, to Dec. 31, 2021. Eligible taxpayers can claim the ERC on an original or amended employment tax return for a period within those dates.

To be eligible for the ERC, employers must have:

1. sustained a full or partial suspension of operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 during 2020 or the first three quarters of 2021,
2. experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021, or
3. qualified as a recovery startup business for the third or fourth quarters of 2021.

As a reminder, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021. Additionally, for any quarter, eligible employers cannot claim the ERC on wages that were reported as payroll costs in obtaining PPP loan forgiveness or that were used to claim certain other tax credits.

To report tax-related illegal activities relating to ERC claims, submit Form 3949-A, Information Referral. You should also report instances of fraud and IRS-related phishing attempts to the Treasury Inspector General for Tax Administration at 800-366-4484.

Go to IRS.gov to learn more about eligibility requirements and how to claim the Employee Retention Credit :

1. For qualified wages paid after March 12, 2020, and before Jan. 1, 2021 – Notice 2021-20, Notice 2021-49, and Revenue Procedure 2021-33
2. For qualified wages paid after Dec. 31, 2020, and before July 1, 2021 – Notice 2021-23, Notice 2021-49 and Revenue Procedure 2021-33
3. For qualified wages paid after June 30, 2021, and before Oct. 1, 2021 – Notice 2021-49 and Revenue Procedure 2021-33
4. For qualified wages paid after Sept. 30, 2021, and before Jan. 1, 2022 – Notice 2021-49 and Notice 2021-65

Additional Information

1. Employee Retention Credit - 2020 vs 2021 Comparison Chart | Internal Revenue Service (irs.gov)
2. Form 941-X Instructions (April 2022 Revision) – for use in conjunction with Form 941 Instructions from relevant calendar quarter
3. Form 941 Instructions (December 2021 Revision)
4. Form 941 Instructions (2020 Revisions)
5. Form 943, 943-X, 944, 944-X, CT-1 and CT-1-X Instructions