

2010

# EMPIRE STATE

PETROLEUM ASSOCIATION

*inside*

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A look back at  
the scandals that  
shaped New York  
state politics over  
the last four years

### Revenue for the Budget Deficit

*Recent developments on a  
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taxes and Indian reservations*

### Can You Articulate Your Core Message?

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Published for the  
**Empire State Petroleum Association**  
80 Wolf Road, Suite 308  
Albany, NY 12205  
Tel: (518) 449-0702  
Fax: (518) 449-0779  
[www.espa.net](http://www.espa.net)

Published by



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5950 NW First Place  
Gainesville, FL 32607  
Tel: (800) 369-6220  
Fax: (352) 331-3525  
[www.naylor.com](http://www.naylor.com)

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Published September 2010/ESP-A0010/4508

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# Learning from the **Past**

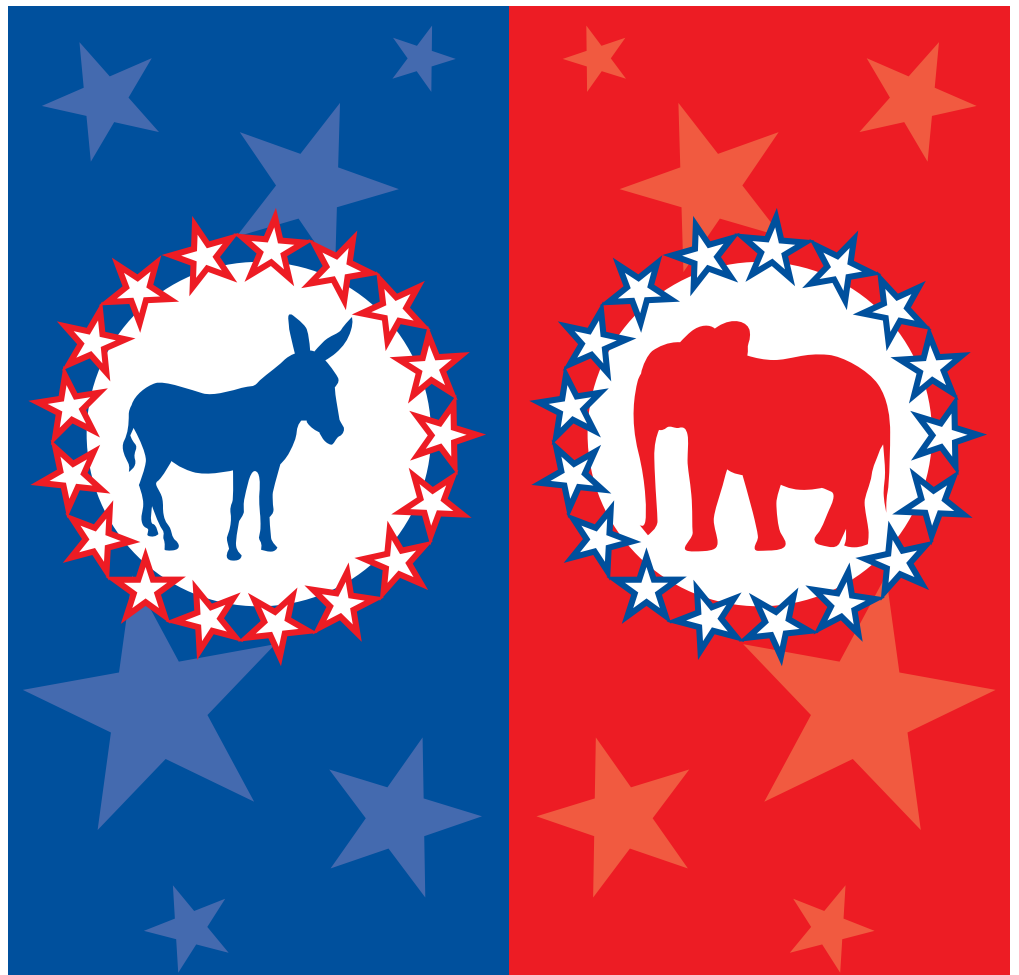
A look at the scandals that shaped  
New York state politics over the last four years

*By Amy Kellogg, Esq.*

**T**he past few years have been scandal-scarred and turbulent in Albany. While Albany has always had its share of scandal and drama, the past four years seem to have set a new precedent—a precedent that we all hope will end this November when one election cycle chapter closes and another begins.

In November 2006, Eliot Spitzer was elected as Governor of New York by a staggering margin. At the time, it was called a mandate by the people of New York. It was the first time in 12 years that a democrat had been in the governor's mansion. And even those who weren't democrats seemed to be energized and excited to have former Attorney General Spitzer as governor. The Sheriff of Wall Street was going to do to Albany what he did to the financial industry.

*(continued on page 10)*





The first true test for Spitzer came before he was even sworn into office. In the midst of the 2006 elections, information began to emerge regarding New York State Comptroller Alan Hevesi. Allegations were raised by an unknown republican challenger, Christopher Callahan, that Hevesi had misused his office and the resources of his office for personal gain. This infor-

mation surfaced several months before the elections, and became known as Chauffergate. This scandal was well known before election day, and despite this, Hevesi was still re-elected by a wide margin.

However, shortly after Hevesi was re-elected, more information came to light and he was charged criminally. As part of his plea bargain, he agreed to resign his position. With a vacancy in this office, the Constitution requires a vote during a joint session

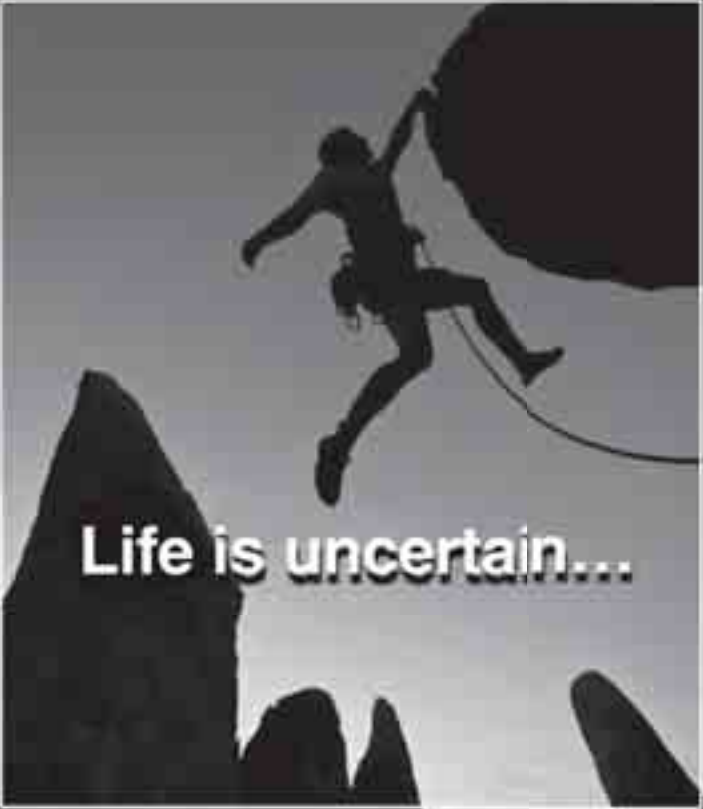
of the senate and assembly to find a replacement. Governor Spitzer asked for a special panel to be convened to select Hevesi's replacement. The panel met and selected a replacement. The governor approved of the selection by the panel.

The assembly and senate were not as open to the selection by the panel. Both houses felt that the Constitution was clear and that the replacement was to be their pick. So while they considered the findings of the panel, they did not rely on those findings. In the end, in direct contradiction of Governor Spitzer's wishes, the assembly and senate selected then Assemblyman Tom DiNapoli to replace Comptroller Hevesi in February 2007.

Hoping to move on from this scandal and move forward, Governor Spitzer turned his focus to his legislative agenda, and for the next few months, things returned to normal by Albany standards. Of course, normal in Albany isn't really normal. Business was accomplished, but there was a very public feud between Governor Spitzer and then Majority Leader Joseph Bruno, who was the leader of the republican-controlled senate. It was no secret that Governor Spitzer and Senator Bruno disliked each other intensely.

Therefore, it came as no surprise when scandal number two broke in the summer of 2007. This scandal became affectionately known as Troopergate. It was alleged that Governor Spitzer had instructed his staff and the state troopers to monitor the travel and whereabouts of Senator Bruno for the purpose of catching him doing something he shouldn't be doing. No such monitoring or records had ever before been kept, and when it was discovered that this had happened, an investigation was immediately launched. Senator Bruno alleged that the governor was using state resources to try to disgrace him politically.

As this investigation continued, there was another attempt to return to  
*(continued on page 12)*




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business as usual. However, already tense relations were even more strained. In January 2008, the legislative session began with an air of uncertainty never before experienced. Business and the tension continued along until the beginning of March 2008, when on March 10, 2008, an unprecedented and unpredictable scandal broke. *The New York Times* reported that Governor Spitzer had been caught in a prostitution ring scandal. As shock waves reverberated through Albany, more details emerged. Two days after this story broke, Governor Spitzer resigned as governor.

On March 17, 2008, Lieutenant Governor David Paterson was sworn in to office as the new governor. Less than one week later, and in the hopes of moving forward and avoiding more scandal and drama, Governor Paterson announced that he and his wife had

marital difficulties and that he had been unfaithful. He also announced that he had used drugs at one point in his life but that he was past that point.

Governor Paterson was a New York state senator before becoming lieutenant governor, so with his swearing in came hopes of a new environment in Albany—one where the governor and the two houses could get along and accomplish the business of the state of New York. As Governor Paterson took over and began to govern, it appeared that a new era was beginning in Albany.

The first indication that we weren't out of the woods yet came when Senator Bruno, then majority leader of the state senate, announced in June 2008 that he was stepping down as majority leader and would not be seeking re-election in the fall. This news was shocking in that there had been no indication that the senator was going to make this decision. Additionally, with the upcoming November 2008 elec-

tions, the republicans were fighting to maintain their majority control of the chamber, and Senator Bruno had indicated that he would be leading the fight and helping the republicans maintain control. He did step down and in June 2008, Senator Dean Skelos became the new senate majority leader.

His role as majority leader was short lived. In November 2008, the democrats gained control of the senate by the slimmest of margins. In order to pass any bills in the senate, there must be 32 votes. The democrats took over with 32 votes to the republicans 30 votes. Almost as soon as the elections were over, a struggle over who would be leader in the senate began.

After many starts and stops and alliances being formed, Senator Malcolm Smith was named as the new senate majority leader. The 2009 legislative session began with the democrats in control of the governorship, the senate and the assembly. It seemed that there should finally be a return to normal



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Albany business. This seemed to be true for a few months. However, as the New York state budget deadline came and went, and agreements could not be reached between the democratic leaders; tensions once again began to soar.

Everything came to a head on June 8, 2009, when Senator Pedro Espada and Senator Hiram Monserrate lead a coup by defecting from the democratic side of the aisle and joining the republican conference. To say that chaos ensued is an understatement. This led to over 31 days of pure chaos and legal action in the senate. Within a week of joining the republicans, Senator Monserrate rejoined the democrats meaning that the senate was left in a 31-31 deadlock.

After various attempts to end the coup and broker an agreement, Governor Paterson announced on July 8, 2009, that he was appointing Richard Ravitch as lieutenant governor. Under the state Constitution, when there is a tie on a vote in the state Senate, the

lieutenant governor breaks the tie. As Governor Paterson had been elevated to governor from lieutenant governor, and there was no provision to fill the lieutenant governor position, there was no one to break a tie in the senate. This in and of itself was a controversial move because no one thought that the governor had the power to appoint a lieutenant governor. As soon as his appointment was made, a lawsuit was filed. On September 22, 2009, the New York State Court of Appeals ruled 4-3 that Governor Paterson could appoint a lieutenant governor.

In the end, the appointment was not needed to end the coup. The next day, July 9, 2009, Senator Espada announced that he was returning to the democratic fold as the new majority leader of the senate democrats. The post had been held by Senator Malcolm Smith, who agreed to give up the majority leader title if he could remain the senate president pro temp. To complicate matters further, the sen-

ate democrats announced that while these two would hold the leadership titles, the true leader of the senate democratic conference would be Senator John Sampson.

As Senator Sampson took over leadership of the senate democratic conference, he took over several major headaches. Not only was he dealing with the fallout from the coup and trying to move the conference forward, he was also dealing with outside legal charges against one of his members who had just played a key role in the coup. Shortly after being elected to the state Senate in November 2008, Senator Hiram Monserrate was charged with various counts stemming from a domestic incident between himself and his girlfriend. It was alleged that he had hit his girlfriend in the face with a water glass, leaving a gash that required 14 stitches. It was also alleged that he dragged her through the building.

*(continued on page 14)*



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Senator Monserrate went to trial on these charges in October 2009. In the end, he was found guilty on October 15, 2009, of one misdemeanor account of assault. He was part of a democratic conference that was already mad at him for his role in the coup. Once he was found guilty of assault, many of his democratic colleagues called for

his immediate resignation. He did not resign. Senator Sampson appointed a panel in December 2010 to make a recommendation about the fate of Senator Monserrate. The panel recommended that Senator Monserrate be either censured or expelled. In the end, Senator Monserrate was expelled by his senate colleagues, democratic and republican alike, on February 9, 2010.

Once again, there were hopes of some return to normalcy in Albany, and

once again, these hopes were dashed. Shortly after Senator Monserrate's expulsion, several stories were printed by *The New York Times* that revealed Governor Paterson had intervened in a domestic dispute between one of his top aides and his girlfriend. The girlfriend was alleging domestic violence, and it was reported that Governor Paterson had contacted the girlfriend and asked her not to press charges. These very serious allegations garnered immediate attention and an investigation was launched by several entities. At the same time, it was also alleged that Governor Paterson had solicited and received tickets to the World Series in October 2009 in violation of the New York state gift laws. This allegation led to another investigation against the governor. While both of these investigations are still ongoing, Governor Paterson announced on February 28, 2010, that he would not be running for election as governor of New York state in the fall of 2010.

This announcement cleared the way on the democratic side for Attorney General Andrew Cuomo to run for governor of New York. It was known that even if Governor Paterson were running, Attorney General Cuomo was going to primary him for the position. In the end, the path was cleared for Attorney General Cuomo without a bitter primary fight. Poll numbers as of the printing of this article indicate that Attorney General Cuomo should handily win the November 2010 election as the Governor of New York state, defeating the two republican challengers, Rick Lazio and Carl Paladino.

While there will always be some level of scandal associated with politics and elected officials, we can only hope that as this four-year election cycle draws to a close, and we begin a new four-year cycle, that we can leave the dramatic and life changing scandals in the past and move forward with a new governor and a new set of elected officials. ▲

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# Where Do Substance Abusers Work? Anywhere they can!

*Contributed by Federated Insurance*

According to the 2008 National Survey on Drug Use and Health, 72 percent of drug users are employed. Where are they working? Could it be at your operation?

The following scenario represents an actual Federated claims incident:

A driver for an insured business had a history of drug abuse. He went through a treatment program, so the business owner kept him on because he thought the rehab was a success. On a Monday afternoon, after a weekend of partying, the insured driver drifted off the road and hit a boy riding his bike home from school with another child on the handlebars. The driver tested positive for drugs.

## **Drugs + alcohol + work do not mix!**

As reported by the American Council for Drug Education<sup>1</sup>, substance abusers are:

- Ten times more likely to miss work.
- Approximately 3.6 times more likely to be involved in on-the-job accidents, and five times more likely to injure themselves or another in the process.
- Five times more likely to file work comp claims.
- Thirty-three percent less productive than those who are drug free.

Protect your company from becoming part of these statistics by implementing a drug- and alcohol-free workplace program.

## **Value of a drug- and alcohol-free workplace**

There are many reasons why a business would initiate this type of program—a bad experience with an employee on drugs, federal regulations or even just a strong stance against drug and alcohol use in the workplace. No matter what the reason, these programs can help employers create cost-effective, safe and healthy workplaces.

There are real benefits to creating a drug- and alcohol-free work environment:

- It demonstrates to your employees that their well-being is important to you.
- It attracts employees who are free of drugs and alcohol.

- It encourages a clear thinking, professional workplace.
- It helps prevent bad publicity from being associated with your business.
- Fewer injuries can lead to improved workers' compensation modifiers and lower insurance premiums.

A recent survey conducted by Federated revealed that more than half of the small- to medium-sized businesses surveyed already had a program in place. Federated also found that, although our insureds believe drug and alcohol programs would be extremely beneficial, they may believe that they are complicated to implement. Some think that these programs are too costly and time-consuming.

*(continued on page 16)*



## Getting started

To help streamline this process, Federated—ESPA's recommended insurance provider—is proud to introduce a new program with the tools and resources you need to help make your business one that is drug and alcohol free. If you're interested in starting a program, Federated has the resources available! Federated's new Drug and Alcohol Free Workplace Program suggests taking the following steps:

**1. Educate employees:** Make your entire organization aware of the benefits of your drug- and alcohol-free workplace policy and program. Owners, top management, supervisors and nonsupervisory employees at all levels should be prepared for implementation of the policy and program. Educate everyone about the problems associated with the use and misuse of substances. They all can benefit from education and training that reinforces and deepens that awareness.

**2. Train supervisors:** Customize supervisor training to take into account the particular characteristics of your workplace to maximize the effectiveness of your drug- and alcohol-free workplace program.

**3. Consider an Employee Assistance Program (EAP):** An EAP can

## 72 PERCENT The percentage of drug users who are employed

enhance the work climate of an organization and promote the health and well-being of everyone involved. EAPs usually are multifaceted programs designed to help employees with personal problems that affect their job performance. Though some EAPs concentrate primarily on alcohol and others on drug problems, most EAPs address a wide range of employee issues. While some companies choose to pay for these services, it is not required. At a minimum, businesses will usually help employees locate this type of service.

**4. Administer drug testing:** Drug testing is one way to protect your workplace from the negative effects of alcohol and other drug abuse. A drug-testing program can deter employees from coming to work unfit for duty. It can also discourage alcohol and other drug abusers from joining your organization in the first place.

To help support each of these steps, Federated's Drug and Alcohol Free

Workplace Program offers our clients access to both employee and supervisor training, as well as discounted pricing on testing devices and laboratory services. Do you know what's required by your state? Federated has access to state-specific information to help guide you to what's needed.

Contact your local Federated representative for more information. Clients can also visit Federated's Shield Network<sup>SM</sup> at [www.federatedinsurance.com](http://www.federatedinsurance.com) to get started on their own drug- and alcohol-free workplace program. ▲

*This article is intended to provide general recommendations regarding risk prevention. It is not intended to include all steps or processes necessary to adequately protect you, your business or your customers. The risk management practices described above are for illustration purposes only. You should always consult your personal attorney and insurance advisor for advice unique to you and your business. ©2010 Federated Mutual Insurance Company. All rights reserved.*

<sup>1</sup>American Council for Drug Education's Facts for Employers, <http://www.acde.org/employer/DWork.htm>



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# Cutting-Edge Billing



## Communicate using today's technology

**M**any issues confront energy companies today in getting daily billing communications to customers in a timely, cost-effective manner. As you know, any delay getting billing communication into your customers' hands directly results in slower receivables.

Q: Are your employees pulled away from core duties to help get your billing out?

Q: Are you purchasing/leasing expensive processing equipment to get your billing in the mail?

Q: Have you looked at what your company is paying for postage annually?

Q: Do your customers understand the billing information as it is being presented?

Q: Are your clients actually taking the time to review the expensive inserts you are sending them with your statements?

Q: Is your customer service department being inundated with confused customers asking for clarification on their bills?

Q: Can customer service easily access the exact bill that you provided your customer to clarify these questions?

Q: Do you ever need to resend your customer a bill because they did not receive the first bill?

If you have said 'yes' to any of the questions, the end result is delayed payment. Fortunately, affordable cutting-edge solutions exist today, even for the small- to mid-sized companies. Chances are your clients are looking for some of these solutions right now. Are you listening to them?

### What does this mean?

Q: Now that we have identified a whole list of "pain" with bill processing, how can we use this information to reduce your overhead while increasing the return of your payments?

A: *By finding an outsourcing partner that is focused on keeping your company ahead of the technology curve!*

### Confusing bills?

Your software simply places data as it is programmed. Imagine a partner that takes your billing data from your current software and formats the information into an easy-to-read, customer-friendly bill. Easy-to-read bills mean less customer confusion, resulting in fewer customer service calls, resulting in faster customer payments.

### Costly to prepare the billing communication?

Imagine a partner that takes your daily, weekly, monthly billing data via secured transmissions and inexpensively processes all of your billing information in a timely manner. Your obvious benefit is reduced overhead: employees focusing on their core duties instead of folding and stuffing bills; and no need for purchasing or leasing of expensive processing equipment. Add the easy-to-read customer bills and you will be cutting down on another expensive piece of overhead which is customer service calls received.

*(continued on page 18)*

Easy-to-read bills mean less customer confusion, resulting in fewer customer service calls, resulting in faster customer payments.



## Move into the 21st century

Imagine a partner that allows your clients the choice between a paper and paperless bill. When your client chooses paperless billing, your company will enjoy numerous benefits:

- Instant delivery of your billing communication via fully secure online functions.
- No postage.
- Your client is being driven to your No. 1 marketing tool, your website, to view their bill.
- Working with your current payment processor combines online payments with paperless billing that will greatly increase your cash flow.
- Powerful back office tools that allows your customer service representatives to view the actual bill online as they are fielding questions from your clients.

## Marketing opportunities

How often is your company printing an expensive color insert that your customer doesn't take the time to look at? Technology now exists to print your marketing message/coupons directly on the bill itself, in full color. Research shows that 95 percent of bills are not only opened, but they are studied for 2-3 minutes at a time. By printing your mes-

sage right on the bill itself, you are turning your statements/invoices into a communication piece as opposed to a piece of paper stating what a customer owes.

## Convenient communications

Outsourcing your billing process not only reduces your overhead but also gets your important billing/marketing communication into your customer's hands sooner. Americans are plugged in. They are looking for more convenient communications in this fast-paced world. Give them the tools that they are looking for while increasing the efficiencies of your own company.

In today's fast-paced environment, the energy company that provides the most convenient customer communications has the edge over their competitors. Stay ahead of your competition. ▲

## INTERNET MYTHS

*Myth: My customers are not comfortable using the computer.*

Fact: Nielsen Online provides data that shows that 74 percent of American adults use the Internet today; compared to just 44 percent in 2000 (according to International Telecommunication Union).

*Myth: I have a customer base consisting of many older clients, a demographic that does not go online.*

Fact: According to December 2009 PEW Research, 70 percent of adults aged 50-64 use the Internet. Usage rises to 81 percent in the 30-49 age-bracket and to 93 percent in the 18-29 age-bracket.

*Myth: My customers are in the lower income brackets, they probably don't even own a computer, never mind go online!*

Fact: Internet usage is high regardless of income; according to the PEW Research report, 60 percent of homes with family income below \$30,000 are online, 76 percent of homes with income of \$30,000 to \$50,000 are online; 83 percent between \$50,000 and \$75,000, and household incomes over \$75,000 show 94 percent online.

*Myth: My customers are online, but they won't be comfortable viewing their bills and making payments online.*

Fact: According to the 2008 Consumer Banking and Bill Payment Survey, more Americans than ever, approximately 63.1 million of Internet-using households, or three-fourth of those online, pay at least one bill online in an average month. These households collectively paid 934 million bills in a typical month. Internet-using households pay an average of 11 bills per month, and of these, 42 percent are paid online.

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Michael J. Reilly, President

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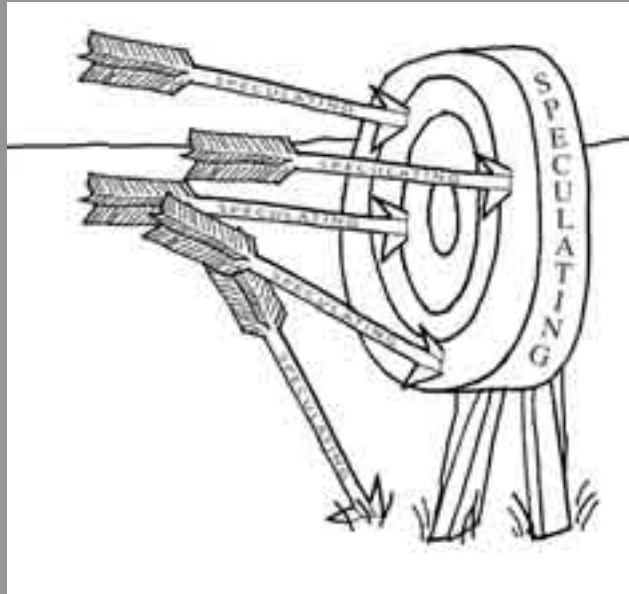
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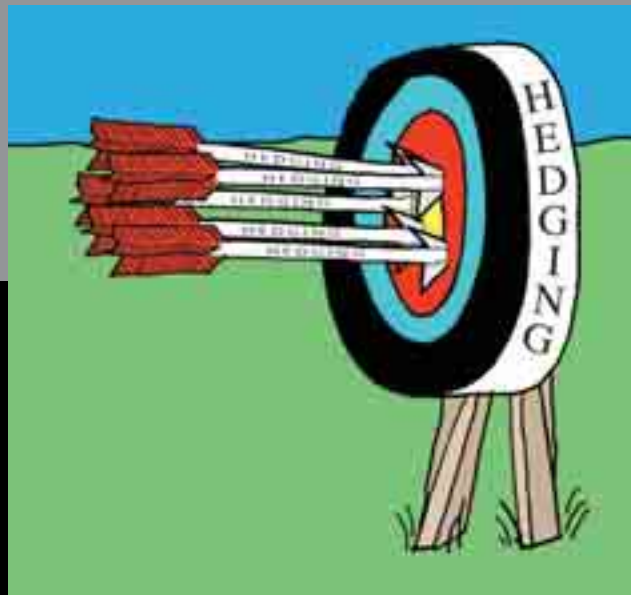
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# Focus on the Numbers

## Drill down into true economics

By Phil Baratz, Angus Energy

Over the past 20 years, we have attempted to help our clients do a number of things in order to maintain and increase their profitability. Whether it was a plan to offer a capped price, to take advantage of available storage or to tie their hedges to a local weather station, it has always been the same: find out where there are weaknesses and opportunities and look to maximize the opportunities while working to “fix” weaknesses.

Over the past three years, we have wandered a bit outside of the sphere of simply offering risk-management (hedging) tools, and have spent a good deal of time drilling down into the true economics (pricing programs and hedging are certainly a big part, but not all, of those economics) that determines the level of profitability (or losses) that an oil company will achieve.

Despite the obviousness of needing to “have a plan,” we have been finding that too many oil companies find out how they DID, not how they are DOING. Finding out how you did, in some ways, is like reading last month’s newspaper. You can’t make changes now that might have been necessary several months ago—even the most sophisticated heating oil company owners haven’t mastered time travel yet!

The budgeting process, as simple or as complex and detailed as you wish for it to be, cannot be something that is simply copied and pasted from last year to this year.

Customer counts change, usage trends must be considered, wage increases are part of the mix, and a host of other items that will impact both the income side of the ledger, as well as the expense side, must be factored in. There are many ways to tackle the budget-setting process—working with your accountant, speaking with your banker and hiring a consultant are but a few. We work with a number of our clients using a set of spreadsheets with easy inputs that were developed by oil market bankers. The best one is the one that does what you need, but the process must become routine.

Once a basic budget is set to forecast the next year out, there are a number of things that can and should be done as the season progresses. This article is not the place to delve too deeply into the specifics, but if you are armed with the knowledge that these things are necessary, available and invaluable, it will go a long way towards moving from how you DID to how you are DOING.

Benchmarking your numbers—both versus your historical numbers and versus industry averages—is a growing trend for oil dealers who are looking to gain an edge in profitability. Bear in mind that gaining an edge in customer count and/of sales volume isn’t that hard, just keep lowering your price and taking customers from your competition. Sure, bad for the industry, and likely will hurt your bottom line, but if volume is all that you are after, the process is

*(continued on page 22)*

Despite the obviousness of needing to “have a plan,” we have been finding that too many oil companies find out how they DID, not how they are DOING.

not that hard. However, if you want to increase or stabilize profits...). While the notion of benchmarking does include (anonymously) sharing YOUR data, the reference marks can lead to a lot of very productive thoughts and, more importantly, actions. There are some that say, "Why do I care what others are doing? I only care about how I am doing." That might not be totally illogical—after all, if someone has a different ratio of customers to service techs, why should you? However, if someone else is making it work with 100 more customers per tech, shouldn't you look into it?

After setting a proper budget (one that plans for foreseeable top- and bottom-line results) and then figuring out how you are doing as compared to your peer group (a very important exercise, which does not have to take a lot of time) run "what-if" scenarios. "What if prices spike?" "What if January is 30 degrees warmer than normal?" (Remember last spring?) It can be said that DURING the winter, the only flexibility is in the price that you are charging—hard to dramatically shift staffing or equipment needs mid-stream, but if you don't even see that a problem is brewing, you might not even make the necessary (yes, necessary, not "it would be nice if I could raise my price by a nickel") pricing moves. The what-if scenarios need to be run in the summer, as part of the budgeting process, at a time of the year when you can sit back, assess and determine a proper plan of action.

Contrast that to making a decision on January 17, when the weather forecasters are calling for weekend temperatures in the 70s! It's always easier to plan and then act because you have seen this before (in your planning), than making an emotional knee-jerk reaction, or worse, no reaction at all.

Lastly, as far as the easy things that need consideration, is the analysis of cash-flows and working capital (credit line) needs. Making a 70-cent margin might sound great, but when/if it comes from a customer base that sees a large percent of receivables fall outside of the bank requirements to be counted as eligible receivables, it changes things. Sure, you might be quite profitable, but you also might be on your way to being out of business due to working capital short-falls. Plan and chart the flows of your needs by incorporating everything that you can on the expense side, overlaid by the expected revenue streams. This, too, needs to be shared with your bankers, and there is help available to set this up for proper presentation.

A lot has changed in the industry over the past 20 years, some of it for the bad and some of it for the good. You do need to be savvier than in the past, but there are plenty of tools available to help you. The simple notion that says, "I charge as much as I can, and I have cut my expenses as much as I could, so there is nothing left that I can do," really needs to be revisited. ▲

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# Collected Assurance

## The five keys to selecting a collection agency

Contributed by I.C. System, Inc.

Your unpaid accounts represent lost revenue. You want to recover as much of that revenue as possible and do it quickly and without exposing yourself/business to any risks. However, it can be difficult to select an agency among the thousands of options that blur together among claims of “lowest rates” and “highest recoveries.” Let’s cut through the clutter and focus on.

### The five keys to selecting a collection agency:

**1. Experience:** How long has the agency been in business? Does it specifically collect commercial (owed by businesses) debts and collect for petroleum marketers/suppliers? Recoveries increase when collectors are well-versed in your industry’s terminology and understand your debt-specific characteristics.

**2. Compliance:** Select an agency that is certified by the Commercial Law League of America. CLLA certification is the most coveted industry designation held by fewer than 2 percent of U.S. agencies. Certification requires adherence to a strict code of ethics and passing ongoing audits.

Additionally, confirm the agency:

- Has a full-time, on-site attorney.
- Certifies its collectors through ACA International.
- Adheres to best-practices as an ACA PPMS-certified agency (approximately 70 agencies worldwide are certified).

**3. Quality assurance:** Be sure the agency is a Better Business Bureau ([www.bbb.org](http://www.bbb.org)) “Accredited Business” so it’s committed to resolving complaints. Ask for a Liability Insurance Certificate and confirm coverage extends to you. Make sure the agency is licensed/bonded in ALL requiring states, not merely the one your business is based. Confirm it records all calls and can play one for you if your debtor has a complaint. Since you’ll forward debtors’ information to the agency, verify data security; ask for documentation

of an ISO 27002 Assessment, SAS 70 Type II Audit and a PCI Audit. Learn if any

professional groups endorse/recommend the agency’s services; many longstanding endorsements signify a trusted agency.

**4. Offerings:** All agencies should offer these two common recovery programs:

- Letter programs utilizing a final notice and/or third-party letters. These flat-fee programs typically let you keep 100 percent of recoveries.
- Intensive programs leveraging skip tracing, experienced commercial collectors and credit bureau reporting.
- Optional services for increasing recoveries should include bankruptcy proof of claim filing and legal services (non-litigation and litigation).
- The best services reduce the number of debts you’d eventually send to the agency; check if it offers access to commercial credit reports and/or a national skip-trace database.

**5. Accessibility:** Confirm the agency has client service staff available toll-free. An agency should provide full reporting and free online tools for you to submit debts and to see its activities (calls made, letters mailed, etc.) on each debt. ▲



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# The Ins and Outs

By Tracy Richmond, AVATAS Payment Solutions

**T**his interview with Vice President of AVATAS Payment Solutions Tracy Richmond will help you better understand the credit card processing programs available to the heating fuels industry.

**Q: Let's start with the basics. Are there special processing rates available to heating fuels retailers?**

A: YES! There are special interchange categories for your industry. The categories are greatly reduced from general processing rates and even different than petroleum retailers. But then it gets confusing. Each of the card types have different programs. MasterCard and Discover have the most attractive processing rates and Visa has a good program, too. The Visa program does not offer the same level of discounts as the other two, but it's still much better than the alternative. American Express does NOT offer any discounted processing specifically for your industry.

**Q: If the programs are all different, how do our members know if they are getting all the benefits they are entitled to receive?**

A: There are a lot of people selling credit card processing. There is no special school or training. It's important to know that not everyone can be a specialist in all aspects of card processing. The processing programs your members are entitled to participate in take a special knowledge. It's important they ask to see actual processing statements from other heating fuels retailers. Then it's imperative that the statement show the discounted programs for ALL THREE card types. If your members have questions about whether or not they are enrolled correctly, they can always e-mail or call me and I would be happy to help them.

**Q: So as long as a dealer is "enrolled" in these programs, should they feel comfortable that they are getting all these benefits?**

A: Actually, No. It's not that simple. Just signing up does not get them there. The vast majority of processing statements we see don't have the full advantages utilized. I would say over 75 percent of the dealers I talk to still have a lot of savings that is untapped! It takes a special knowledge to get all three card types to "sync" on one merchant account. Again, someone just saying you're in the programs doesn't mean you are getting the maximum savings!

**Q: Do these programs add up to any significant savings? Is it even worth it for the dealers to look into this?**

## Credit card programs for the fuel industry

A: YES! Let me give you an example, if a dealer is enrolled correctly for all three programs AND is passing the processing data correctly, their processing rates should be below 1.5 percent. Compare that to most processing statements and the savings can be over \$.05/gallon! That really starts to add up, so it is an area for real expense reduction.

**Q: A few specifics please. I have heard that by utilizing these programs the dealers should not pre-authorize a card prior to delivery. Is that true?**

A: Yes and No. Again, *each program has specific guidelines* for how to run transactions, including pre-authorizations. As long as you are being told the correct information and are following those steps, there are ways to accomplish this. If your processing rates are not below 1.5 percent with or without pre-authorizations, you should investigate. The only exception to this rule is if your company runs a high percentage of corporate cards. Those cards *do not* qualify for the reduced rates and could raise your average rate. ▲

*Tracy Richmond works with home heating retailers across the country to help streamline their payment process and implement SIMPLE cost and time saving solutions. She is the co-owner of AVATAS Payment Solutions and presently works with hundreds of dealers from small one-man trucks to the nation's largest home heating distributors. She is a frequent presenter at tradeshow and seminars across the country. Tracy can be reached at [tracy@avataspayments.com](mailto:tracy@avataspayments.com) or 866-849-8800.*



# Can You **Articulate** Your **Core Message?**

Help customers choose your company by making it clear what you represent

By Rich Rutigliano, PriMedia, Inc.

**T**he retail energy marketplace is changing, and Oilheat companies need to connect with customers like never before. To expand your profits while your competitors are earning less, you need a potent core message that differentiates your company and invites strong loyalty to the brand. If you feel that your current selection of products and services doesn't support such a distinctive message, it might be time to change what you're doing.

A company's core message is a concise explanation of what it does to help its customers. Some companies simplify customers' lives by providing a broad range of household services, including cooling, plumbing and electrical. Others help customers use less oil by integrating alternative energy solutions like Bioheat®, solar and geothermal. Still others enhance comfort with advanced solutions like radiant heat, snowmelt and ultra-high-efficiency equipment.

A strong core message has always been an asset, but it's now becoming a necessity. Home heating costs have increased conspicuously in recent years while consumer confidence has fallen, and customers are being more selective with their spending. Price consciousness is on the rise, and full-service oil dealers need to give clear signals about the value they deliver to keep customers from losing their faith.

For many companies, the challenge is to set themselves apart. If you have been promoting the company on the strength of its family-owned identity and commitment to quality, you have created a strong platform on which to build. Those values will always remain in style, but they won't differentiate you. You need to represent something uniquely positive and progressive, or prospects will over-

look you and your customers may pay more attention to competitors' offers.

Advertising is an important part of the solution, but your ads are only as good as the message they convey. To maximize the value of your investments, develop your core message before you start work on your outreach campaigns. Confront the question of how you'll deliver unique value that will attract more customers over time. Every company is unique, but there are a few basic core messages that have solid long-term potential, like these.



The core message is an implied statement of what your company does for customers, while a slogan is a catchy phrase that supports the core message.

**Alternative Energy Specialist:** You can tap into many consumers' desire to transition to alternative fuels by positioning yourself as an agent of change. By replacing Oilheat with Bioheat and installing solar hybrid equipment, you are showing customers an easy path to the destination. Core message: *We're helping you integrate alternative fuels.*

**Certified Conservation Specialist:** There are different ways to use less oil, including using high-efficiency equipment. By gaining certification from a group like the Building Performance Institute (BPI) and promoting your expertise in high efficiency, you can carve out an identity as a forward-thinking, modern solutions provider. You can also perform energy audits and install doors, windows and insulation. Core message: *Our comprehensive services help reduce your energy use and enhance your comfort.*

**One-Stop Shop:** By expanding your service offerings to include plumbing, electrical, HVAC, security and even home theater installations, you position yourself as a one-stop shop, and you can focus your marketing on getting customers to call you for every home-related need. Core message: *We simplify your life by meeting all your home service needs.*

With a core message like that, you create tremendous potential for customers to connect you to their lives. Instead of promoting just Oilheat delivery and service, you're ready

to market effectively by offering the kind of services that consumers affirmatively want.

### Is it time to adapt?

If your company isn't yet prepared to deliver on a compelling core message, it might be time to freshen up your product and service lines. Oilheat sales and service is a challenging industry, and your revenues can diminish over time if you don't find a way to attract new business. If your reputation is good and you have a strong core of loyal customers, you have hope.

Size up your market, identify a niche or two that you could fill and then engage your employees in a planning process. Figure out how you want the company to look in three years, then determine what steps you have to take to get from here to there. Your management and staff depend on you for their livelihood, and you can motivate them to help transform the business. Change may not be easy, but the process can be invigorating and may uncover hidden strengths in your organization. If you need to acquire or hire, the struggling economy can actually work in your favor.

One helpful reference point for all dealers is the new core message that the Oilheat industry has honed over the last 12 months. Industry leaders have agreed on a new national course of action that includes ultra-low-sulfur heating oil and increased biofuel blending. The plan also calls for increased integration of solar energy with Oilheat and the use of home energy audits to drive conservation improvements. For marketing purposes, it is a promising agenda that meshes nicely with consumers' appetite for environmental protection and energy independence.

Skepticism about Bioheat continues within the industry and the blenders' credit is in flux, but a lot of smart companies are seizing on the marketing potential, which is huge. Customers want alternatives to fossil fuel, and they are tired of excuses about the country's lack of progress in developing new energy sources. By selling Bioheat and promoting it effectively, you position yourself as a solutions provider, and you can motivate customers like never before.

The Bioheat example illustrates how a strong core message can help reposition a company. Consumers want to spend their money well, and when it comes to energy, they want to control their costs and find alternatives to fossil fuels. Effective messages about Bioheat, solar energy and

*(continued on page 28)*





conservation can identify you as a solutions provider, associating you with the hope and progress that seems to be missing elsewhere.

### Niche appeal has strong legs

The core messages described above might sound most limited to niche-type companies that target only a subset of Oilheat homes, but they can improve a company's appeal across the spectrum. An energy company that embraces conservation and alternative solutions appears smart and progressive to all customers—not just to those who want to switch to Bioheat or integrate solar energy. As long as your business appears purposeful and progressive, you're

more appealing than your competitors who have vague or generic messages.

A core message may seem similar to an advertising slogan or tagline, but it's not the same. The core message is an implied statement of what your company does for customers, while a slogan is a catchy phrase that supports the core message. For example, De Beers diamonds' core message might be, "We provide high-quality diamonds for life's most important milestones," but its slogan is "Diamonds are forever." Similarly, your core message defines the way you help customers, and your slogans and other messaging serve to deliver and reinforce the core message. Identify the core message first, and then develop advertising and outreach that helps customers associate your company with that message.

Advertising is a powerful way to spread your core message, but it's only one medium. Every piece of outreach—websites, company brochures, newsletters, truck designs, uniforms, etc.—should amplify your core message. Hold in-house workshops to help everyone on the staff understand and articulate the message. Ideally, every employee should be prepared to deliver a concise description of how you help customers. As you embrace your core message, look for new ways to disseminate it. If you decide to brand yourself as a provider of "intelligent solutions," look for new ways to drive home the "smart" message at every turn.

While you're developing new messaging, be sure to leverage the equity you have created in your brand. For example, if you have associated your company with a certain color through the years, drive that home. Color associations are powerful, and it pays to continue using the same color scheme, even as your message evolves. In fact, think about increasing the use of your color scheme in marketing materials to strengthen the impression you make.

You can also incorporate slogans, taglines and images from earlier campaigns. When you blend a respect for your company's tradition with an emphasis on new ideas, you project yourself as an established, reliable outfit that has stayed on the cutting edge. Consumers want new solutions, but they also like experienced companies that have proven trustworthy over time.

Your future depends, in large part, on your ability to make solid connections with customers and prospects. Develop a meaningful core message, then use every opportunity to drive it home. ▲

*Richard Rutigliano is president of PriMedia, Inc., a full-service marketing and communications firm with offices in New York City, Long Island and Boston. The company is now offering free marketing consultations to Oilheat retailers. Call 800-796-3342 or visit [www.primediamarketing.com](http://www.primediamarketing.com) and [www.oil-heat.com](http://www.oil-heat.com).*

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# Show Me the Money

## Basic steps to avoid financial mishaps when acquiring retail or wholesale gas assets

By Ken Shriber, Petroleum Equity Group Ltd.

**A**s a consultant and financial advisor to fuels distributors and marketers, I frequently write about the important, not-to-be overlooked steps to a successful and profitable retail acquisition. I routinely share those same steps in every initial meeting with every prospective client.

Yet, even the best planning and analysis can be derailed by lenders who do not make good on their non-binding letters of interest or commitments. Their “subject to” clause will always give them an out, despite their initial euphoria about your deal. While the public bid or private purchase plan and strategy is being set in motion, the distributor/buyer must work feverishly to secure the debt and equity needed at closing. And, unless you are in the same category of entities that might be mentioned even in the same news article as World Fuel Services Corp. or Global Partners LP, you will need to raise substantial funds from multiple sources.

### Basic steps to avoid financing mishaps

**START EARLY:** Buyers often make the mistake of deciding to acquire a retail gas portfolio without thinking about the financing structure. It’s not 2007 anymore, and money is not as readily available as it used to be. Because this is not likely to change anytime soon, your lenders and investors will need time to evaluate the opportunity, spread risk and present a solid financing plan. This cannot be done at the last minute when you are signing a binding purchase agreement that requires a “hard” deposit soon thereafter.

**CAST A WIDE NET:** You will have to float your proposal and financials to many lenders to gain awareness and attention. Some may not be interested because they shun the asset class. On the other hand, some may have energy assets already and retail businesses can enhance their portfolio and mitigate risk. I have found that many investors know others

in the financial world who might have interest even if they do not. Talking to a large financial community Rolodex is key to finding the right partners.

**BUILD YOUR FINANCIAL NETWORK:** Talk to everyone you know who may have a link to the financial community, and stay in touch. Better yet, hire a consultant who knows the space and who has immediate access to lenders and investors. In the end, this will save you time and money.

**TRUST YOUR INSTINCTS:** If an investor offers you a basic framework for a deal that sounds too good to be true, it probably is. Any deal structure must, in the end, work for both parties. You are well advised to hire a specialist to help structure a deal with investors/partners/banks who are truly interested in the retail gas sector and can help analyze the terms of any financing opportunities. The business of financing multi-million dollar deals is challenging, made more so by a lending environment that has not been favorable to small- and mid-sized companies.

**GET IT IN WRITING:** While it sounds trivial, securing their proposal in writing on letterhead with a signature (vs. an e-mail) lends more significance. It adds a layer of incremental validity to their offer. Lenders will take you more seriously whenever they produce such a document, even when it is a non-binding letter of interest.

Address financing like a downhill skier at the precipice of an Olympic run... with passion and unrelenting determination. Following these steps will help to keep you on soft powder and out of the woods! ▲

*Ken Shriber is managing director at Petroleum Equity Group Ltd., which provides consulting advice and financing to fuel jobbers and large multi-store franchisees. He can be reached at 917-882-2702, ks@petroleumequitygroup.com or visit [www.petroleumequitygroup.com](http://www.petroleumequitygroup.com).*

# Revenue for the Budget Deficit

## Recent developments on a long-standing issue: cigarette taxes and Indian reservations

*By Emilio Petroccione, Esq., Colwell, Colwell & Petroccione, LLP*

**T**he controversy over New York state's ability to collect state taxes on products sold to non-Indians on Native American reservations returned to prominence this year. A staggering state budget deficit has sent state officials scrambling for any feasible way to close the fiscal shortfall. The possibility of adding hundreds of millions of dollars in tax revenue to the state's coffers has reinvigorated the state's desire to collect these taxes.

Though this longstanding issue always included both motor fuel and cigarette sales, the latest attempt is designed to collect only cigarette taxes on sales to non-Indians. However, the success or failure of this effort will directly determine whether motor fuel taxes will be collected under similar circumstances. This article will briefly describe recent developments on this lingering and complex issue.

### **Background**

It has been almost three decades since the tax-free sales by American Indian retailers to non-Indians became

a significant and pervasive problem for non-Indian motor fuel stations, truck stops and convenience stores. Non-Indian businesses that sell motor fuel and cigarettes cannot compete with the tax-free price that Indian retailers charge and have suffered tremendously. In addition to devastating these small businesses, the state and its political subdivisions have lost and will continue to lose millions of dollars in annual tax revenues. Government officials also believe that the loss of these tax funds hinders anti-smoking initiatives.

Since the late 1980s, there have been numerous lawsuits litigated in both state and federal courts challenging the state's authority to collect taxes on non-Indian purchases. Past and newly adopted Department of Taxation and Finance (Tax Department) regulations exempt from state taxation sales to Indians on Indian reservations in recognition of the Nations' sovereignty. To collect taxes on sales to non-Indians, the rules impose the tax upon wholesalers prior to delivery of products to the Indian Nation. Wholesalers, Indian Nations and Indian retailers have

objected to the imposition and collection of these taxes on grounds of federal preemption, sovereignty and treaty rights. In addition, the Indians also argue that their operations, through casinos and other businesses, generate employment and economic prosperity to regions surrounding their reservations.

The difficulty of resolving the conflict of tax-free sales to non-Indians has always been complicated by other state/Indian Nation disagreements. The tax problem is enmeshed in complex political and legal issues involving Indian land claim disputes and casino development. Native American land claims have been in litigation for decades and have yet to be resolved.

Casino development proposals always generate controversy on issues of gambling, local community benefits and terms of agreement with the state. Even existing Native American casinos have spawned some conflict. For example, the compact entered into between several Indian Nations and the state requires that certain security services provided by the New York state Police be paid by the Indians. Although

On July 1, 2010, state taxes rose from \$2.75 per pack to \$4.35 per pack, making New York state's cigarette tax the highest in the nation.

the state has billed for approximately \$40 million in services, the amount remains unpaid.

The validity of New York state's taxing authority was settled sixteen years ago when the U.S. Supreme Court upheld the state's right to collect taxes on Indian sales to non-Indians. Following the Supreme Court decision, New York's attempts to enforce the law were met with resistance and unrest. The state abandoned efforts to enforce the law and sought to resolve this conflict through negotiations with the Indian Nations.

Dissatisfied with the progress of the tax collection issue, the state legislature, always interested in this matter, decided to take a more active role. From 2003 through 2008, the legislature passed several bills requiring the Tax Department to promulgate regulations to collect taxes on Indian sales to non-Native Americans. Some of these bills were vetoed. Those bills that were enacted were a part of the state budget process where, similar to today, the state sought the tax revenues to help balance its budget. Unfortunately, in each case the Tax Department's implementation of new collection regulations were postponed and eventually abandoned.

*(continued on page 32)*



In 2006, the Tax Department issued an advisory opinion informing cigarette wholesalers that it did not intend to implement the law and suspended enforcement indefinitely. Lawsuits brought to force the state to collect the tax under existing statutes were rejected by the courts which ruled that New York possesses the right to forgo enforcement of these taxes. In essence, the executive branch, through several administrations, had adopted an approach of forbearance with respect to the issue. Often the reason given by each administration was that a “cooperation rather than confrontation” approach was the preferred method of resolving the issue.

### Recent legal cases

In addition to the state, New York City and two upstate counties have been involved in enforcement efforts to compel the collection of taxes on non-Indian sales. In 2008, New York City

commenced litigation against smoke shops on the Poospatuck Reservation of the Unkechaug Indian Nation, regarding untaxed cigarette sales. The lawsuit contends the smoke shops are violating state and federal laws by selling cigarettes in bulk to bootleggers who resell them in New York City. The mayor of New York asserted that the litigation was necessary because the state had not enforced its own tax laws regarding Indian cigarette sales to non-Indians. The city estimates that it is losing about \$195 million a year in tax revenue due to the untaxed sales. This lawsuit is pending in Federal Court.

Enforcement efforts in Central New York were also undertaken. The counties of Seneca and Cayuga sought to prevent tax-free sales of cigarettes to non-Indians by confiscating over 17,000 cartons of unstamped product from stores owned by Cayuga Indians but located on non-reservation county land. The district attorneys in each county also

pursued criminal prosecution of tribal members on tax evasion charges. Sealed indictments were filed but never opened. This past May, New York state’s highest court rejected the prosecutors’ cases against the Indian-owned convenience stores for selling tax-free cigarettes. In a divided four-to-three ruling, the majority for the Court of Appeals decided that the two counties could not prosecute the defendants because the stores could be considered qualified reservation land under state tax law. Thus, any cigarette sold to tribal members would be free of tax. While the court agreed with the state’s legal entitlement to taxes on sales to non-Indians, it ruled that the prosecution could not proceed since at the time of the 2008 seizure, formal state tax rules had not been adopted to regulate the collection of tax.

### Current developments

In January 2010, Governor David A. Paterson announced as part of his proposed executive 2010-2011 budget that the state would end its practice of forbearance. The governor stated that the Tax Department would promulgate rules to implement the Indian tax exempt coupon system to prevent the sales of unstamped cigarettes to Indian retailers thereby enabling the state to begin collecting state cigarette taxes on sales to non-Indians. In February 2010, the department revoked its 2006 advisory opinion and published regulations for public comment. Unfortunately the rules only covered cigarette sales and not motor fuel. As the months passed, the state’s projected budget deficit increased, the state fiscal planning process languished and the budget was not passed on time. New York began to operate on a week-to-week basis by approving one-week budget extenders sent by the governor.

In an effort to close a projected state budget shortfall of more than \$9 billion, the legislature approved one of Governor David A. Paterson’s budget extenders which contained a \$1.60 per pack tax increase on cigarettes and a plan to start

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collecting taxes on cigarettes sold by Indian retailers to non-Indians beginning September 1. On July 1, 2010, state taxes rose from \$2.75 per pack to \$4.35 per pack, making New York state's cigarette tax the highest in the nation. The tax increase also widened the gap between the cost of a pack of cigarettes sold by a non-Indian business versus a pack sold tax free by an Indian retailer. The price disparity will likely drive more consumers to Native American retailers, which, when coupled with the tax increase, will result in additional state tax revenue losses, thus adding more urgency to the state's desire to collect these taxes.

On June 22, 2010, the Tax Department adopted emergency regulations to implement the non-Indian tax mechanism. Under the rules, the Indian Nations will receive a specified amount of cigarettes for use by their own members. State taxes would be collected at the wholesale level for any cigarettes sold to non-tribal members and any cigarettes sold to non-Indians by Native American shops must bear a tax stamp. The state estimates that approximately \$115 million in revenue will be earned by the end of the fiscal year from cigarette sales to non-Indians on Indian reservations, a figure challenged as being too low. These estimates do not include tax revenues from motor fuel sales.

In addition to feeling the pressure of New York state's impending tax collection effort, Indian tobacco retailers have to deal with the federal government's new "Prevent All Cigarette Trafficking" Act, which was signed by President Obama in March. The federal law prohibits the U.S. Postal Service from shipping cigarettes and also requires online cigarette sellers to pay all federal, state and local taxes and affix tax stamps before delivering any products to customers. The statute directly impacts Indian retailers who operate Internet mail-order cigarette businesses that distribute their products through the mail. Although the law became effective at the end of June, it has already been the subject of a legal

action brought in the U.S. District Court for the Western District of New York. In that case, a federal judge has issued a temporary restraining order to permit a Seneca cigarette retailer to continue to operate his Internet mail-order cigarette business pending a judicial review of the federal act.


### Conclusion

The collection of state taxes on Indian retailer sales to non-Indians has been an unresolved issue for nearly thirty years. In assessing the possibility for success of this latest attempt to collect these taxes, there is little optimism to be gained by examining the history of this complicated issue. Copious legislative efforts, rulemakings, federal and state lawsuits, and negotiations have proven fruitless in solving this perpetual problem.

While gearing up for the enforcement of sales tax collections, the governor continues to negotiate with Indian

Nations toward a settlement of these issues. Although negotiations continue, legal action challenging the state's latest effort seems inevitable. The plaintiff would undoubtedly seek an injunction to enjoin the implementation of the regulations pending a determination of the legal validity of the state's tax rules. In many ways, this is reminiscent of past efforts by the state. Unless a negotiated settlement is reached, or the state is prepared to take an aggressive approach to enforce the regulations, a resolution of this matter may still be many years away. ▲

*Emilio Petroccione is a partner in the Albany, New York law firm of Colwell, Colwell & Petroccione, LLP. He concentrates his practice in regulatory, legislative, energy, environmental and business law. He is regulatory and legislative counsel to the Empire State Petroleum Association.*



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