

AT THE PUMP & DOWN THE AISLE

PROVIDING LIFE'S ESSENTIALS TO WEST VIRGINIA-
FUEL, FOOD & CONVENIENCE



July 2015

Number 651

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OMEGA Gives Back



Scholarship Winner Justin Meadows with his father, Jay Meadows, OMEGA President Jan Vineyard and OMEGA Chairman Greg Rogers

Scholarship Program Reaches \$120,000 to Members, Employees and Their Children

Providing Life's Essentials to West Virginia - Fuel, Food and Convenience.

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Fueling the American Spirit.

From the President ...

I am so thankful for our members and what they do each and every day in their communities to give back. I know that every day our members donate not only products, but their time to make a difference. Together as an Association we continue to strengthen West Virginia, particularly our youth.

To date we have donated \$120,000 in scholarships to college students. It has been great traveling the Mountain State meeting our future leaders. It is really one of my favorite things to do.

Our Children's Charity Golf Outing will be held September 22nd at Stonewall Resort. As we begin working on sponsorships for this event, it is a great time to look back at our past success and see the difference we have made. To date we have donated over \$2.1 to West Virginia children. We have truly made a difference!

Reminder for July:

Visit our Facebook page at www.facebook.com/omegawv. We have 386 Likes and we need more! Spread the word! Please invite your friends to join.

Sign up for the Children's Charity Golf Outing supporting the Children's Home Society of WV. Help us raise our total fundraising to over \$2.3 million and support WV children. This event is a great way to raise money and to spend time networking with your peers.

Donate to the OMEGA PAC. The 2016 primary election is closer than you think and the heat has been turned up on fundraising. It seems every year we face serious issues that could negatively impact our industry and each of our businesses. 2016 will bring many important elections and it is imperative that we keep the legislators who understand our industry, as well as elect other good strong candidates who are willing to work with us and listen to our collective voices when deciding on issues affecting our businesses. A strong PAC enables us to support the candidates we need in office.

Jan

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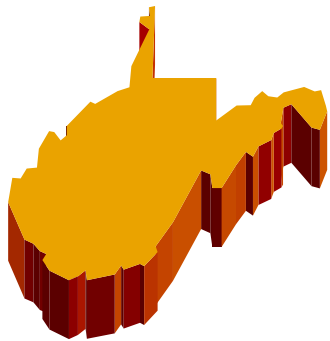
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West Virginia News

State Budget Balanced; But State Behind Heading into New Fiscal Year

The state ended the fiscal year June 30 some \$60 million off in revenue collections but the state budget finished balanced because of a number of moves made by the Tomblin administration and members of the state legislature.

The revenue numbers were released by state Revenue Secretary Bob Kiss on July 2nd. Collections totaled more than \$4 billion but missed estimates mainly because of a downturn in severance tax collections from coal and natural gas.

A state worker hiring freeze remains in effect in the new fiscal year but Kiss said some other options will need to be explored because the freeze isn't generating the savings it did when it was first put into effect two years ago.

Tax collection estimates for both personal income and consumer sales tax were almost met last budget year. Kiss said that's a positive.

The state released the following highlights of the recently completed budget year:

Personal Income Tax

- ◆ After declining by 2.2 percent in Fiscal Year 2014, Personal Income Tax collections grew by 10.4 percent in Fiscal Year 2015, a net gain of nearly \$173 million.
- ◆ Wage and salary withholding tax collection growth improved from just 0.7 percent in the prior year to 5.1 percent in fiscal year 2015.
- ◆ Estimated income tax payments grew by more than 16 percent and nonresident withholding tax payments jumped by more than 21 percent from the prior year.
- ◆ A greater than 30 percent increase in natural gas production stimulated both income growth and growth in estimated tax and non-resident withholding tax payments.
- ◆ The Personal Income Tax accounted for roughly 43.8 percent of total General Revenue Fund collections for the year.

Consumer Sales & Use Tax

- ◆ Fiscal Year 2015 Consumer Sales Tax collections totaled nearly \$1.228 billion. Collections rose \$55 million from prior year receipts. Despite the revenue growth, sales tax collections still fell short of estimate for both the month and the year. The Consumer Sales Tax accounted for nearly 29.3 percent of General Revenue Fund collections in Fiscal Year 2015.

Severance Tax

- ◆ Fiscal year 2015 Severance Tax collections totaled nearly \$414.2 million.
- ◆ General Revenue Fund receipts fell by more than 15 percent from the \$488.7 million collected in the prior fiscal year.
- ◆ Coal production levels were largely unchanged from the prior fiscal year and natural gas production rose by more than 30 percent. However, average coal prices fell by roughly 10 percent and average natural gas prices dropped by roughly 30 percent from the prior year. These factors lead to the decline in tax collections for the year.
- ◆ Monthly Severance Tax collections of \$50.5 million were \$2.4 million below estimate and 38 percent below prior year receipts.
- ◆ Cumulative collections were \$60.4 million below estimate and 9.8 percent below prior year adjusted receipts (adjusted to reflect timing changes for local tax distributions).

- ◆ The Severance Tax accounted for roughly 9.9 percent of total General Revenue Fund collections in Fiscal Year 2015.

Corporation Net Income Tax

- ◆ Fiscal Year 2015 Corporation Net Income Tax collections for the State General Revenue Fund totaled \$186.1 million, a decrease of \$17.4 million from prior year collections.
- ◆ The decline in revenues was largely attributable to the continuing phase-out of the Business Franchise Tax component. June collections of \$30.1 million were \$10.2 million below estimate and 7 percent below prior year receipts.
- ◆ The Corporation Net Income Tax accounted for roughly 4.4 percent of total General Revenue Fund collections in Fiscal Year 2015.

Additionally, State Road Fund revenues for the fiscal year totaled nearly \$743 million. Collections exceeded both the annual estimate by more than \$41.4 million and prior year collections by nearly \$8.3 million.

State Business Index Suffers 5th Straight Monthly Decline

West Virginia University's Bureau of Business and Economic Research

For the fifth consecutive month, West Virginia experienced declines in key economic indicators, but the state's top economists said June's 0.1 percent decline is smaller compared with the three months prior.

The Mountain State Business Index shows the state's economy remains dicey at the moment given the declines.

John Deskins, director of West Virginia University's Bureau of Business and Economic Research, took a positive view of the small decline by looking at the bigger economic picture.

The aim of the MSBI is to provide an up-to-date gauge of the state's expected business performance over the near term. June's results point to increasingly weaker prospects for West Virginia's economy during the late summer and early fall months, as the index is in the midst of its longest period of retrenchment in six years.

After only registering a handful of negative readings in three years, the MSBI has noticed sustained declines in the last three months. The decline over a six-month period stood at 1.9 percent and represents the largest percentage decline during a six-month period since September 2009, a MSBI press release reads.

Ultimately, this points to the possibility of weakening economic activity over the course of the next quarter or two.

In the middle of June, Brian Lego, an economist with WVU, said the state is not headed into a recession. However, the MSBI warns that there are signals of a coming contraction in the state's economy which can be identified if the index declines by at least 2 percent over a six-month period and a majority of the individual components are in decline.

The recent weakness in the index has been driven largely by significant deterioration in only two underlying indicators, unemployment insurance claims and the trade-weighted dollar, and not the majority needed to indicate a downturn is likely.

Initial unemployment insurance claims have increased the past eight months in a row and are 37 percent higher on an annualized basis over the last six months.

The index comprises seven economic indicators that were determined to lead expansions or contractions in the West Virginia economy. The seven indicators are related to the following factors: building permits; unemployment insurance claims; the value of the U.S. dollar; stock prices related to West Virginia employers; interest rates; coal production; and natural gas production.

Workforce West Virginia Receives \$5.2 Million Grant

West Virginia is set to receive \$5.2 million in grants to help retrain people who are out of work.

On Thursday, the U.S. Department of Labor announced the grant, which is part of a larger \$138 million effort to reduce unemployment in 27 states. The grant money will be given to Workforce West Virginia to help with its established job training programs.

The federal grant follows recent increases in the state's unemployment rate. In the past five months, the unemployment in West Virginia has increased from 5.9 percent to 7.2 percent, even as the national rate has leveled out around 5.5 percent, according to data from Workforce West Virginia.

U.S. Secretary of Labor Thomas Perez said Wednesday that while the country has rebounded from one of the worst economic collapses in over a century, some people continue to struggle.

"There are still too many people on the sidelines," Perez said.

Perez said the grants, which continue to build upon the efforts of the Workforce Innovation and Opportunity Act, are meant to help around 15,000 people "punch their ticket to the middle class" and "build an economy that works for everyone."

In West Virginia, the grants are meant to help the long-term unemployed and laborers from the state's coal mining industry that have been laid off.

By partnering with existing state and local government job training programs, Perez said the funding will help put people to work at jobs that meet "regional and industry based demand."

In the Mountain State, Workforce West Virginia will partner with companies like Dupont, Toyota and the Shale Net Consortium. The training programs will be focused on manufacturing, healthcare, information technology and the state's oil and gas industries.

"Understanding the needs of the local or regional labor market is key," Perez said.

WV Lottery Sales Report

Through May 31, 2015, fiscal year to date sales totaled \$1,070,851,312. This was down 4 percent from fiscal year 2014, a decrease of \$48 million. The weekly per capita fiscal average was \$12.01, down 66¢ from the same period last fiscal year.

May's overall sales were \$101,814,899, an increase of 4 percent from April's sales. Compared to the same month last year, sales were down 4 percent.

Through May 31, 2015, fiscal year to date sales for traditional lottery (Instants and Online) totaled \$166,539,865. This amount was down 4 percent from fiscal year 2014, a decrease of \$7 million.

Traditional lottery sales for May 2015 of \$14,721,558 were up 7 percent from April and down 1 percent from May 2014.

West Virginia Unemployment Rate Increased in June

West Virginia's seasonally adjusted unemployment rate increased in June to 7.4 percent, a 0.2 percent increase. As the national unemployment rate declined to 5.3 percent, the number of West Virginia residents without jobs increased 1,100 for a total of 57,500. West Virginia's not seasonally adjusted unemployment rate also increased three-tenths of a percentage point to 7.2 percent.



Federal Issues

Obama Administration Proposes New Overtime Eligibility Requirements

On June 30, the Obama Administration announced draft federal overtime regulations that would go into effect in 2016. The draft rule would require overtime pay for salaried workers who make up to \$50,400 a year. Currently, workers who earn more than \$23,660 cannot claim overtime.

It does not currently contain a proposed revision to the Duties Test, which was a big concern. The proposal also seeks comment on what portion of incentive pay should be included as part of the salary test. We argued that incentive pay should be allowed to be considered

Early in 2014, President Obama signed an Executive Order instructing the Department of Labor to revise federal Overtime regulations. The draft rule will negatively impact small businesses as many will be forced to put workers on an hourly or part-time schedule which will hurt job creation. The GOP-controlled Congress is expected to hold several hearings on the proposed rule and will attempt to block it. Court challenges are also expected. The National Retail Federation also conducted a study on a potentially new overtime rule.

There will be a 60-day comment period once the proposal is published in the Federal Register.

Supreme Court Upholds ACA Federal Subsidies

On June 25th, the U.S. Supreme Court decided, by a 6-3 vote, to uphold *King v. Burwell*, effectively ruling in favor of the Obama Administration that Advanced Premium Tax Credits under the Affordable Care Act (ACA) can be awarded to residents in the states that did not set up a state health exchange and preserving a key component to the overarching ACA.

Legislation Would Lessen Affordable Care Act Burden

Recently, legislation was introduced in Congress that would make the employer mandate reporting requirements under the Affordable Care Act easier on business owners. Representatives Diane Black (R-TN 6) and Michael Thompson (D-CA 5) have introduced H.R. 2712, the Common Sense Reporting and Verification Act of 2015.

Some highlights of H.R. 2712 include:

- ◆ Creates a voluntary prospective reporting system: Permits employers to voluntarily report to the IRS general information about their health plan for the current plan year, which will help increase the accuracy of eligibility determinations for Exchange tax credits; state and federally-facilitated Exchanges will access information securely through the Data Services Hub.
- ◆ Streamlines the reporting process: Eases reporting burdens for employers who use the voluntary prospective reporting system by requiring 6056 reporting statements only for those employees for whom the employer has received notification that the employee or their dependents received an APTC rather than issuing reporting statements for the entire workforce.
- ◆ Protects privacy: Eliminates the requirement that employers and insurers collect and remit dependents' and spouses' Social Security numbers.
- ◆ Modernizes transmission of information to individuals: Allows for electronic transmission of employee and enrollee statements rather than requiring this information be provided only by paper statement sent through the mail.

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- ◆ Establishes oversight of reporting and tax credit verification: Requires a Government Accountability Office (GAO) study to provide insight into how availability of employer-sponsored insurance is being verified by state and federal Exchanges, and to suggest improvements to the appeals and prospective reporting systems.
- ◆ Creates eligibility process for subsidies: Requires the Exchanges to review the most recent tax filing for individuals who are automatically re-enrolled in Exchange coverage and adjust them accordingly.

Hazardous Materials: Transportation of Lithium Batteries

On August 6, 2014 the Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rules (79 F.R. 46012) that set new shipping standards for domestic ground shipments of products with lithium batteries. The rules will impact retailers and wholesalers who transport rechargeable and non-rechargeable batteries, including distribution centers who break down larger shipments of batteries that are subsequently transported to individual retail locations. Generally, the new regulations require that domestic ground shipments of products with lithium batteries adhere to shipping standards which were previously only required for international air and sea transportation. Domestic ground shipments now require additional marking and labeling of packages containing lithium ion (rechargeable) and lithium primary (non-rechargeable) batteries and battery containing products, shipping documents and a Watt-hour marking on all lithium ion batteries.

The final rule was initially set to go into effect on February 6, 2015 however PHMSA agreed to extend the mandatory compliance date from February 6, 2015 until August 7, 2015. This decision was in response to comments that FMI along with RILA, NRF and the Rechargeable Battery Association submitted on January 30, 2015. In anticipation for the August 7 effective date and in response to a number of questions from FMI members we have developed a helpful summary of hazardous material regulations for the transportation by highway and rail of smaller lithium batteries.



BrickStreet Discount Program

Effective March 1st, our discount is 2.3% on workers' compensation premiums through BrickStreet. Have you checked with your agent to see if you qualify?



Convenience Store News

NACS Comments on Proposed Same-Day ACH Transactions

On July 2, NACS responded to the Federal Reserve's request for comment on its proposal to implement mandatory same-day Automated Clearing House (ACH) transactions. Specifically, the Fed is considering adopting mandatory same-day ACH with an interbank fee by incorporating the National Automated Clearing House Association's (NACHA) amended operating rules into the Fed's rules governing ACH.

While NACS applauded the Fed's push to modernize the U.S. ACH system, which predominately offers next-day processing as its fastest option, it expressed serious concerns with the Fed's proposal to incorporate NACHA's amended rules. To pay for a system-wide upgrade to same-day processing, NACHA's newly amended rules (recently adopted on May 19, 2015) set a fixed 5.2 cent "interbank fee" per same-day ACH transaction that will be paid by the bank originating the same-day ACH transaction to the receiving bank that processes the transaction.

In its comments, NACS acknowledged that mandatory faster settlement of ACH transactions would be helpful to both consumers and retailers, yet NACS criticized the Fed's possible incorporation of NACHA's centrally set interbank fee to fund this upgrade. NACS pointed out that the "interbank fee" looks suspiciously similar to a swipe fee, and would eventually undermine ACH as a low-cost alternative to payment cards by "incentivizing banks' wasteful spending on services" and "driving bloated costs to the ACH system." Moreover, NACS noted that requiring a centrally set fee established by a private entity amounts to price-fixing that "cannot survive scrutiny under U.S. antitrust laws because it destroys the incentive for banks to compete on price."

In addition, NACS questioned why the Fed would not push to update the ACH system to permit real-time processing, the most technologically advanced option available that is already used abroad and in other areas of the U.S. payments system. "No merchant wants to invest in a system that will be considered obsolete when he finishes paying for it," argued NACS.

Menu Labeling Would Provide Flexibility for Retailers

For the past year, since the FDA issued its final "menu labeling" rule, NACS has been actively working on behalf of convenience retailers to moderate the rule's most onerous compliance features. Governing how retail establishments that sell prepared food must disclose the caloric content of those offerings to consumers, the rules are written in a fashion that makes it easy for large chain restaurants to comply but is particularly onerous for smaller retailers, like c-stores.

Now, NACS needs your help to advocate for sensible menu labeling legislation in the U.S. House of Representatives. Recently, Representatives Cathy McMorris Rodgers (R-WA 5) and Loretta Sanchez (D-CA 47) introduced H.R. 2017, the Common Sense Nutrition Disclosure Act. The bill would amend the FDA rules, making compliance that is flexible and reasonable for our channel of retail, and protecting your employees from potential criminal penalties for mistakes made in labeling of food products.

NACS has joined with like-minded groups to draft a letter that will be sent to members of Congress, encouraging them to sign on as co-sponsors of this important legislation. NACS is now asking for your assistance by adding your company's name to the letter. Time is of the essence, as the FDA rule comes into full effect on December 1.

To have your name added to the list of signees, please contact NACS Government Relations Director Jon Taets at jtaets@nacsonline.com. OMEGA has signed this letter.

Legislation Introduced to Restore the Interpretation of the Wire Act

On June 24th, U.S. Senators Lindsey Graham (R-S.C.), Dianne Feinstein (D-CA), Kelly Ayotte (R-N.H.), Mike Lee (R-UT), Marco Rubio (R-FL), Dan Coats (R-IN), and Thom Tillis (R-N.C.) introduced their bipartisan legislation, S. 1668, Restoration of America's Wire Act, which restores the long-standing interpretation of the Wire Act.

The senators noted that in December 2011, the Department of Justice (DOJ) published an opinion that reversed the long-standing interpretation that the Wire Act banned all forms of Internet gambling. DOJ determined the Wire Act only banned online sports betting. This decision opened the door to online gambling in states which previously had not allowed some forms of gaming.

In the aftermath, three states are currently offering some type of online gaming, and up to ten additional states are currently considering doing the same. Courts have split on the legality of DOJ's ruling — the 5th Circuit Court of Appeals has said the Wire Act only applies to sports betting while district-level courts have said the Wire Act applies to all online gambling. The issue has not yet been before the Supreme Court.

"In 1999, South Carolina outlawed video poker and removed over 33,000 video poker machines from within its borders," said Sen. Graham, a member of the Senate Judiciary Committee. "Now, because of this decision by the Obama Administration, virtually any cell phone or computer in South Carolina could become a video poker machine. A major rewrite of a long-standing federal law like this should be made by the people's elected representatives in Congress and signed into law by the president, not done administratively."

Sen. Feinstein addressed other significant concerns in her comments on S. 1668: "Internet gambling is very troubling—many online gambling sites don't screen for underage gamblers and do nothing to prevent money laundering, fraud or other criminal acts. Gambling sites are easily accessible and I believe Congress has a responsibility to prevent abuses from occurring. That's why I support the Restoration of America's Wire Act, which would prohibit nearly all forms of Internet gambling."

The Restoration of America's Wire Act will:

- ◆ Return the Wire Act to where it was in 2011 before the Department of Justice reinterpreted the long-standing statute;
- ◆ Not affect traditional, retail store lottery sales;
- ◆ Not affect gaming establishments, in states where gaming was legal prior to 2011.

Bank Swipe Fees Are Out of Control

Recently, online publication *The Daily Caller* published an opinion piece by NACS Senior Vice President of Government Relations Lyle Beckwith, regarding increasingly high swipe fees paid by merchants.

In the piece, Beckwith compared the U.S. market (unfavorably!) with the European Union, which recently voted to cap the swipe fees charged by banks to process debit and credit transactions. However, he also acknowledged that there is finally a consensus emerging, both domestically and internationally, that the current state of card industry price fixing is both unfair for competition and is bad economics.

"You should care because American retailers and restaurants pay seven or eight times more than European retailers to process the transaction when a customer swipes a debit or credit card. And that means higher prices for their customers," wrote Beckwith, citing a tripling in swipe fees over the past decade, to more than \$50 billion a year. They are now many merchants' second-largest operating cost after labor.

But the news is not all bad, as Beckwith explains: The card companies used to bar merchants from giving customers discounts if they used cards with lower swipe fees, until the Justice Department sued, saying this was illegally anti-competitive, resulting in a recent ruling against American Express. The federal judge in the case stated: "[Charging] merchants inflated prices for their services ... in turn, results in higher costs to all consumers who purchase goods and services from these merchants."

Beckwith points out: "The ruling makes it clear that credit-card companies have been fleecing consumers and merchants for years."

Convenience Stores Grow Sales in 2015

Expanded fresh food offers and continued lower gas prices drove strong convenience store sales in the second quarter of 2015 and these factors — along with the warm weather — are expected to continue to grow sales in the upcoming quarter, according to the results of a retailer sentiment survey released by NACS.

More than 8 in 10 convenience store retailers (83%) say that they are optimistic about their business for the third quarter of 2015, a slight decrease from the 86% who were optimistic three months earlier. By comparison, less than 8% expressed pessimism about their prospects for the upcoming quarter.

Strong sales both at the pump and inside the store continue to drive retailer optimism. More than 4 out of 5 retailers (82%) say that in-store sales were higher in the first half of 2015 compared to the first half of 2014. And a majority of retailers (55%) also say that fuels sales so far in 2015 are stronger than the same period in 2014. The convenience store industry sells an estimated 80% of the gas sold in the country.

Overall, retailers cited three factors that will affect sales in the third quarter: the economy and consumer sentiment (cited by 21%), low gas prices (cited by 20%) and a continued emphasis on fresh food (17%).

Seven in 10 retailers (70%) say that they are optimistic about food sales in the upcoming quarter and almost as many (69%) are also confident about their ability to compete with quick-service restaurants (QSRs), an increase from 63% the previous quarter.

One advantage of convenience retailers is a greater ability to customize food offerings, compared to traditional QSRs.

In addition, convenience stores are adding more healthy and fresh items. More than 3 in 4 (77%) say they sell fresh fruits and vegetables, almost 6 in 10 (57%) sell packaged salads and nearly half (47%) also sell cut fruit and vegetables. Convenience stores also have expanded selections of these items. Over the past six months, 50% of all convenience retailers say they have expanded their fresh fruit sales, 30% have increased their cut fruit and vegetable offers and 21% are offering more salads.

Beyond fruits and vegetables, convenience stores are selling other better-for-you items: 97% say they sell nuts and trail mix, 93% sell healthy bars, 80% sell yogurt, 80% sell string cheese and 56% sell boiled eggs. Of these items, retailers are most expanding selections of health bars (41% expanding) and yogurt (21%).

While convenience store retailers are extremely optimistic about their own business prospects in the second quarter, they are slightly less optimistic about the convenience retailing industry (79%, down slightly from 80% in the second quarter) and the economy as a whole (61%, down from 70% in the second quarter).

These concerns about economic conditions also affect some retailers' views about their business prospects for the upcoming quarter.

FDA Considers E-Liquid Regulations

The U.S. Food and Drug Administration (FDA) is looking to expand upon the e-vapor rules included in its initial set of proposed deeming regulations announced in April 2014. According to an Associated Press report, the regulations could include nicotine exposure warnings and child-resistant packaging requirements.

An online posting said the FDA is considering whether "it would be appropriate for the protection of the public health to warn the public about the dangers or nicotine exposure" and "require that some tobacco products be sold in child-resistant packaging," a response to an uptick in liquid nicotine poisonings reported by emergency rooms and poison centers.

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Though e-liquids used in electronic cigarettes and vaporizers would be included in these potential regulations, the FDA also expressed concerns over lesser-known tobacco products like dissolvable nicotine strips, lotions, gels and beverages.

The FDA will take comments from the public for 60 days on more than two dozen questions surrounding the potential nicotine regulations. Those questions include what kind of language should be used on nicotine exposure warnings, whether graphic warning labels should be used and whether child-resistant packaging should be required for products besides liquid nicotine.

An online Reuters/Ipsos poll of 5,679 Americans suggests electronic-cigarette usage is significantly higher than government estimates. The survey, conducted between May 19 and June 4, 2015, shows nearly 10% of adults now vape.

More States Enact Higher Tobacco Taxes

Seven states have raised cigarette, OTP or e-vapor tax rates

In 2014, only one state, Vermont, raised cigarette or tobacco product tax rates. However, in 2015, there has been an increase in the number of states that have passed into law not only higher cigarette and tobacco taxes, but new taxes on e-cigarettes and liquid nicotine. Following are the raises:

- ◆ Connecticut enacted a cigarette tax increase of 25 cents per pack for two years with the first 25 cents per pack increase going into effect on October 1, 2015, and the second 25 cents per pack increase taking effect on July 1, 2016. The new cigarette tax rate as of October 1, 2015, will be \$3.65 per pack and the tax as of July 1, 2016, will be \$3.90 per pack.
- ◆ In Kansas, a 50 cents per pack cigarette tax increase takes effect today, July 1, 2015. The new cigarette tax rate as of July 1 is \$1.29 per pack.
- ◆ The Louisiana a 50 cents per pack cigarette tax increase, which goes into effect July 1, 2015. The new cigarette tax rate is 86 cents per pack. Also, a new tax of 5 cents per milliliter of liquid nicotine was also enacted for e-cigarettes and e-vapor products.
- ◆ In Nevada, a \$1.00 per pack cigarette tax increase effective July 1, 2015. The new cigarette tax rate is \$1.80 per pack.
- ◆ Ohio added a 35 cents per pack cigarette tax increase effective July 1, 2015. The new cigarette tax rate is \$1.60 per pack.
- ◆ In Rhode Island, a 25 cents per pack cigarette tax increase was enacted and becomes effective on August 1, 2015. The new cigarette tax rate on August 1 will be \$3.75 per pack.
- ◆ Vermont raised the state's cigarette tax by 33 cents per pack for a new tax rate of \$3.08 per pack effective July 1.
- ◆ The Massachusetts Senate is pressing to increase the tax on flavored cigars, flavored smoking tobacco and flavored "blunt wraps" from 40% to 210% in an attempt to reduce use of the products by young adults. Unflavored and tobacco-flavored cigars would remain taxed at 40%. If the tax hike becomes law, Massachusetts would have the highest flavored-cigar tax in the country. The tax would be imposed directly on cigar distributors. So, for instance, a retailer buying a \$1 flavored cigar would pay a \$2.10 tax, significantly but opaquely raising the price for consumers.

Minneapolis Bans Flavored Cigars from C-Stores

The Minneapolis City Council voted to ban the sale of flavored tobacco products at convenience stores. Council members in favor of the ban describe it as "a major policy change" and expect it to have a significant effect on young people, as a means to curb youth smoking.

According to news reports, flavored cigars can currently be sold at more than 300 locations, but when the law goes into effect in January that number drops to fewer than two dozen adult-only tobacco shops. The measure also set minimum prices for both flavored and unflavored cigars at \$2.60.

Hawaii Raises Smoking Age to 21

Hawaii Governor David Ige signed a bill making Hawaii the first state in the country to ban smoking for anyone under 21, beginning next year. The measure bans the sale or use of traditional tobacco cigarettes as well as electronic cigarettes for anyone under age 21. There will be no grandfather clause, so an 18-year-old who can smoke legally now will not be able to do so legally as of January 1, when the law takes effect.

A proposal to raise the smoking age to 21 is currently working its way through the California legislature as well, and four other states have already raised the legal smoking age to 19: Alabama, Alaska, New Jersey and Utah.

PA Beer Sales Bill in Governor's Hands

Many convenience stores in Pennsylvania still face an uphill battle to gain permission to sell beer wine and spirits even if Gov. Tom Wolf signs an historic bill that would do away with the state's long commitment to beer stores. The bill approved by the General Assembly sets the stage for the sale of the state-owned liquor stores and privatization of the state liquor system, as reported in a 21st Century Smoke/CSP Daily News Flash.

Pennsylvania is one of only two states where government has full control of both the retail and wholesale sales of wine and liquor. Bill 466 would allow consumers to purchase up to five bottles of wine and two bottles of liquor at grocery stores and convenience stores with eating areas. Restaurants with enhanced liquor licenses would also be allowed to sell up to two bottles of spirits and five bottles of wine for carry out.

Get the Facts on Our Industry

The NACS State of the Industry 2014 Data Fact Book is now available. This 28th edition of the Fact Book provides a detailed statistical account of industry data over the past several years — or in some cases, decades — as well as a historical recap of the industry and key definitions and events that have shaped it.

The Fact Book tracks key metrics over the past quarter century of its existence, as well as some metrics that go back as far as the 1950s. Delivered in a self-extracting executable file (.exe format), the Fact Book contains more than 560 spreadsheets of aggregated data for easy manipulation, printing and customized reporting.

Excel worksheets make it easy for retailers to benchmark their performance against the industry and top performers with minimal effort. Individual company results, coupled with the Fact Book data, identify the business areas that need a renewed focus and improvement. Finance, merchandising, operations and other key functional areas will all find essential data in the Fact Book to help make better business decisions. In addition, banks, appraisers, product suppliers and many others will find the Fact Book vital to their analysis.

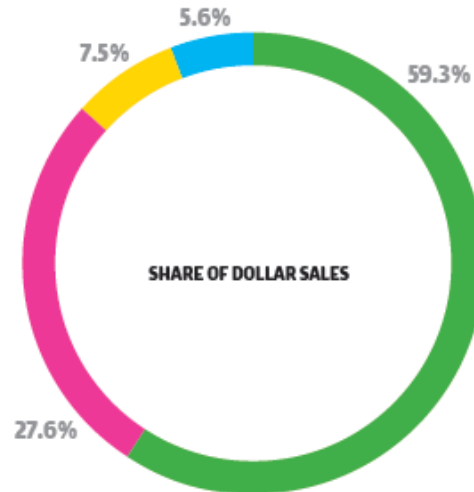
The Fact Book is a companion piece to the NACS State of the Industry Report of 2014 Data, which was published in late June.

The NACS State of the Industry of 2014 Data Fact Book is available for purchase as either a standalone product or as part of the NACS State of the Industry Report/Fact Book package. Orders can be placed online at nacsonline.com/soi or by contacting Reed Armstrong, NACS products and services manager.

Subcategory Sales Breakdown

Meat snacks supplied nearly 60% of alternative-snack dollar sales in 2014, according to Nielsen.

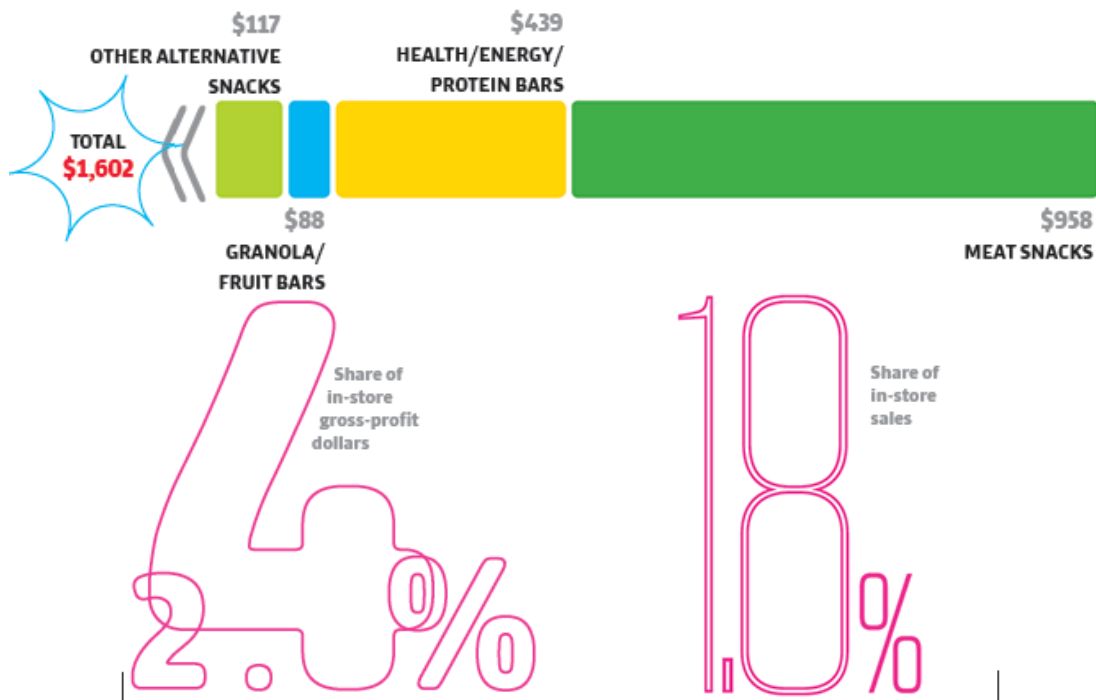
SUBCATEGORY	PCYA**
Meat snacks	11.4%
Health/energy/protein bars	3.3%
Other alternative snacks	15.8%
Granola/fruit bars	10.9%



Source: The Nielsen Co.

Sales by Subcategory

Sales of alternative snacks rose 8.0% for retailers in the same-firm sample.



Gross Profit by Subcategory

Retailers in the same-firm sample grew gross-profit dollars for alternative snacks by 12.3% in 2014.

SUBCATEGORY	AVERAGE MARGIN DOLLARS*	GROSS MARGIN %
Meat snacks	\$418	41.3%
Health/energy/protein bars	\$191	43.9%
Granola/fruit bars	\$38	38.2%
Other alternative snacks	\$51	42.3%
Total	\$698	45.2%



INVEST IN THE BRAND THAT INVESTS IN YOU.

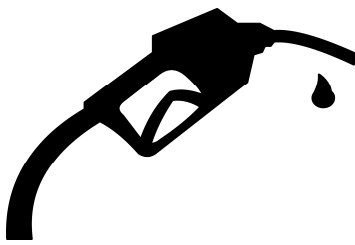


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In addition to our commitment to being a best-in-class, reliable fuel provider, BP also supports our BP Branded Marketers with a variety of programs designed to attract consumers and help build profits — Like BP Driver Rewards, our loyalty program that rewards your station's customers just for filling up*.

To learn more about becoming a BP Branded Marketer, contact your local Business Development Manager: Bob Zampini | (330) 757-0089 | robert.zampini@bp.com

*10 cents off per gallon reward following every \$ 100 in BP fuel spend at participating locations. All rewards may be redeemed after you register and are valid for a single use only, up to 20 gallons. Any unused rewards are forfeited. May not be combined with any other offers. Rewards expire 365 days after the end of the month they are earned. Rewards are earned and redeemable at participating locations with operable transaction networks. Other terms and conditions apply. See www.bpdriverrewards.com for full details and participating locations. ©2015 BP Products North America Inc.



Oil Marketers Update

New Definition of a Tank Vehicle

The Federal Motor Carrier Safety Administration's (FMCSA) new definition for a tank vehicle, and requirements for which drivers need tank endorsements, went into effect on July 8, 2015. Under the new rule, any vehicle transporting bulk tanks with 1,000 or more gallons of total capacity is designated as a tank vehicle.

The new rule simply incorporates long standing FMCSA guidance on the type of liquid or gaseous shipments that require a CDL driver to have a "tank vehicle" endorsement.

This rule generally does not impact drivers hauling petroleum products employed by marketers because they already have the requisite "H" (hazardous materials) and "X" (tank vehicle) endorsements on their CDL license to operate a vehicle with a permanent or temporary cargo tank. Instead, the rule is aimed at CDL drivers with no endorsements who transport temporary tanks containing any NON-HAZMAT liquid or gaseous product.

To determine whether or not a vehicle qualifies:

- ◆ Carriers should add up the total capacity of all bulk tanks on the vehicle. Bulk tanks are defined as those holding more than 119 gallons. These include portable tanks, intermediate bulk containers, cylinders, and other portable tanks that traditionally did not require tank endorsements. Empty tanks and those containing only residue can be ignored.
- ◆ If the total capacity is 1,000 gallons or more, the vehicle is a tank vehicle and be operated only by a driver with a tank endorsement. All states must adhere to the new definition.

The only way that this rule would impact petroleum marketers is if a CDL driver with no tank vehicle or HAZMAT endorsement transported skid tanks containing product on a flat bed truck or other vehicle. This generally does not happen in the petroleum marketing industry since skid tanks are typically transported empty by drivers who have all the endorsements required under FMCSA and PHMSA HAZMAT regulations for transportation as if they contained product.

The bottom line is that this new definition does not effect petroleum marketers.

Six States Raised Fuel Tax July 1

Georgia, Idaho, Maryland, Rhode Island, Nebraska and Vermont each increased their fuel taxes on July 1. The hikes ranged from 7 cents per gallon in Idaho to 0.35 cents in Vermont. Georgia increased its rate by 6.7 cents, while Maryland and Rhode Island increased respectively by 1.8 cents and 1.0 cents. Nebraska consumers saw an increase of 0.5 cents per gallon.

IEA Increases Oil Demand Forecast

The International Energy Agency increased its projection for global oil demand, estimating that global demand will grow by 1.4 million barrels per day in 2015. This represents an increase of 300,000 barrels per day from its previous forecast. Total demand is now expected to reach 94 million barrels per day this year. Gasoline demand in the United States is expected to increase by 4.2 percent in 2015.

House Approves \$8 Billion Highway Funding Extension

The House voted July 15th to approve an \$8 billion bill to extend federal transportation funding until December. The bill passed in a 312-119 vote. It now goes to the Senate, which is considering a funding bill that could also include an extension of the Export-Import Bank's charter.

That would introduce a new complication to the fight over highway funding; conservatives in the House want to keep Ex-Im from being revived. Republican leaders said the stopgap measure will buy time to negotiate a long-term highway bill. "We don't like patches more than anybody else does," House Ways and Means Committee Chairman Paul Ryan (R-Wis.) said. "But this patch is necessary to make sure that [construction] projects don't stop."

Democrats complained bitterly about the temporary extension, which is the 34th highway funding patch that has been approved by Congress since 2005. "If kicking the can down the road was an Olympic sport, what we would win here in the United States Congress, we would win gold, we would win bronze, we'd win silver, and we'd win aluminum," said Rep. Alcee Hastings (D-Fla.).

In the Senate, it is expected that lawmakers will add an Ex-Im extension to the highway funding measure and then send that package back to the House.

Sen. Ted Cruz (R-Texas) and other opponents of the bank have warned GOP leaders against that strategy. "I'm willing to use any and all procedural tools to stop this corporate welfare and this corruption from being propagated," Cruz, who is running for his party's presidential nomination, said at a press conference in Washington on Wednesday. Speaker John Boehner (R-Ohio) has promised to allow opponents of Ex-Im a chance to strip that language from a funding bill if the Senate approves the package. But it is not clear whether opponents would have the votes to win.

Lawmakers are not expected to leave for their August recess without taking action on highway spending.

How EPA's Revised UST Regulations Affect Fuel Retailers

An in-depth review of the Environmental Protection Agency's (EPA) revised Underground Storage Tank Regulations found that the final rule contains a number of improvements from the proposed rule that was released in 2011.

These improvements come primarily in the form of requiring equipment testing and inspections to occur less frequently, and make compliance easier without seriously compromising EPA's environmental objectives. Key components include:

- ◆ **Secondary Containment** – New and replaced tanks and piping must be secondarily contained with interstitial monitoring systems, and new dispenser systems must be equipped with under-dispenser containment. Owners and operators must replace an entire piping run when 50 percent or more of piping is removed and other piping is installed. These requirements only apply to new and replaced systems – there are no retrofit requirements.
- ◆ **Operation and Maintenance Inspections** – The final rule requires periodic walkthrough inspections to prevent and quickly detect releases, as well as additional requirements for periodic spill, overfill, and secondary containment monitoring.
- ◆ **Spill Containment Testing** – Under the final rule spill prevention equipment must be tested every three years to ensure that it will contain small drips and spills when the delivery transfer hose is disconnected from the fill pipe.
- ◆ **Overfill Prevention** – Flow restrictors, or ball float valves, in vent lines have been eliminated as an option for satisfying the overfill prevention requirements (a) for newly installed UST systems and (b) when flow restrictors in vent lines are replaced. (Ball float valves may be used in USTs that have already been installed before the final rule takes effect.)
- ◆ **Secondary Containment Testing** – The final rule requires double-walled containment sumps to be periodically monitored (generally every 30 days), or else undergo periodic testing. It further requires testing of containment sumps used for interstitial monitoring of piping at least once every three years.

(Continued on Page 18)

(Continued from Page 17)

- ◆ **Release Detection Equipment** – The final rule is designed to standardize the operation and maintenance requirements for release detection equipment by requiring owners and operators to follow a set of minimum operation and maintenance criteria for electronic and mechanical-based release detection equipment.
- ◆ **Operator Training** – The final rule requires owners and operators to designate at least one individual for each of three “classes” of operators, and such operators must be trained in certain areas within three years of the final rule taking effect.
- ◆ **Tank Compatibility with Alternative Fuels** – The final rule generally allows tank owners to demonstrate equipment compatibility with alternative fuels (e.g., blends containing greater than 10% ethanol or 20% biodiesel) (a) through a listing by a nationally recognized association (such as Underwriters Laboratories); or (b) based upon written equipment manufacturer approval.
- ◆ **Repairs** – The final rule contains a number of requirements pertaining to repairs of leaking UST systems.
- ◆ **Emergency Generator USTs** – The final rule includes requirements for release detection for UST systems that are storing fuel solely for use by emergency power generators.
- ◆ **New Technologies** – The final rule adds steel tanks that are clad or jacketed with a non-corrodible material to the list of specific new tank design and construction options for UST systems.
- ◆ **Statistical Inventory Reconciliation** – The final rule adds statistical inventory reconciliation as a permissible release detection method and provides performance criteria for its use.

The 487 page final rule is the culmination of four years of an intensive legislative and regulatory lobbying effort by PMAA to win significant concessions from the EPA in order to lessen compliance burdens on petroleum marketers. PMAA’s efforts to persuade the EPA to come up with a common sense, less costly rule were unparalleled in the industry.

Those efforts included; formation of the marketer member PMAA UST Task Force to address the technical issues in the rule; numerous face to face meetings between the UST Task Force and EPA regulators at the Office of Underground Storage Tanks; securing a 60-day extension of the public comment period; submitting comprehensive written comments on the EPA proposal; preparing a detailed industry cost analysis of the proposed rule; enlisting the support of the U.S. Small Business Administration’s Office of Small Business Advocacy (SBA) to advocate for reduced costs; pressuring the EPA to lower costs by having key members of Congress send letters to the agency questioning the significant economic burden imposed on marketers by the rule; drafting and presenting to regulators a comprehensive alternative UST proposal that significantly reduced costs on the industry; met with and convinced the White House Office of Management and Budget reviewing the final rule to send it back to EPA for significant cost reductions. In the end, the EPA adopted many of PMAA’s alternative proposals in its final rule. PMAA’s successful efforts reduced the overall costs imposed on small business marketers by nearly a billion dollars.

After careful analysis, the consensus of the UST Task Force is that the EPA gave PMAA much of what we requested in our alternative proposal – with one or two notable exceptions. One major concession the EPA made to PMAA was to delay implementation of the rule for three years instead requiring compliance 90-days after publication of the final rule. However, the biggest concession made was the agreement with our request to drop testing of interstitial spaces on all secondarily contained equipment in the UST system. The PMAA Board of Director’s agreed earlier this year to file a lawsuit against the EPA had this provision made it to the final rule.

Unfortunately, the EPA left one provision in the final rule that is causing great concern among UST Task Force members as being too costly. The final rule requires sumps used for leak detection monitoring and secondary containment to undergo integrity testing once every three years. PMAA requested that such tests be limited to liquid testing up only to the level where the alarm sensor is triggered and not to the top of the sump above penetration points as proposed by EPA. Any leaks detected in the sump would be considered a failure and would require installation on new double walled sump. The Task Force members believe that testing to the top of the sump would allow liquid to flow into the interstitial spaces of piping and result in frequent failure ratings. Moreover, preparation costs for testing all system sumps could range between \$1000 and \$10,000 depending on system configuration according to the Task Force cost estimates.

U.S. Oil Output to Peak in 2015

The Energy Information Administration (EIA) is reporting that oil production in the U.S. will reach its peak in 2015 before beginning a decline in 2016. The agency estimates that crude oil production will reach 9.43 million barrels a day in 2015, which is a 43-year high. Despite falling oil drilling rig counts, the EIA said, "Production has increased as producers work through the backlog of uncompleted wells. Projected 2015 oil prices remain high enough to support continued development drilling in the core areas of the Bakken, Eagle Ford, Niobrara, and Permian basins."

New GHG Proposal Tightens Truck Emissions, Includes First Trailer Targets

Transport Topics 6/15

The federal government on June 19 issued its long-awaited proposal to further tighten greenhouse-gas emissions for trucks, improve their fuel economy and regulate trailer efficiency for the first time.

The joint proposal from the U.S. Environmental Protection Agency and the National Highway Traffic Safety Administration would phase in more stringent standards for heavy- and medium-duty trucks from 2021 through 2027. The 1,329-page main proposal includes separate standards for engines and vehicles. The trailer regulation would kick in Jan. 1, 2018, and then tighten in 2021 and 2024 before reaching its most stringent level in 2027.

The proposal applies to semi-trucks, large pickup trucks and vans, and all types of buses and work trucks. EPA and NHTSA said the proposal would cut carbon-dioxide emissions and fuel consumption for tractors by up to 24% in 2027, compared with 2018 levels.

This proposal will save consumers, businesses and truck owners money, and at the same time spur technology innovation and job growth while protecting Americans' health and our environment over the long haul.

The government also said the fully phased-in trailer standards would reduce carbon-dioxide emissions and fuel consumption by as much as 8% compared with an average trailer in 2017. Engine efficiency, meanwhile, would be enhanced by an additional 4%.

The new regulation would follow the federal government's inaugural fuel-efficiency standards for trucks that began in 2014 and will become more stringent in January 2017.

EPA and NHTSA will accept public comments on the proposal for 60 days after its publication in the Federal Register. The agencies said they will host two public hearings during the comment period and hope to issue a final regulation during 2016.

The Phase 2 proposal was issued three months later than initially targeted when President Obama announced plans in February 2014 to develop the regulation.

Summer Gas Prices Are Lowest in Years

The average retail price for gasoline this summer (April through September) is expected to be \$2.67 per gallon, the lowest price since 2009 (adjusted for inflation), based on projections in the U.S. Energy Information Administration's (EIA) July Short-Term Energy Outlook (STEO). This decline is mainly the result of the projected 41% year-over-year decline in the average price of North Sea Brent crude oil.

Travel and gasoline consumption are expected to be higher this summer compared to last year's levels, with consumption is expected to increase by 194,000 barrels per day, up 2.1% from last summer. This increase reflects higher real disposable income, substantially lower retail motor gasoline prices, and higher employment and consumer confidence.



Grocery Highlights

NYC Proposal Requires Labeling of “High” Sodium Foods in Some Restaurants; San Francisco Moves to Approve Warnings for Sugary Drinks

Yesterday, New York City’s Department of Health and Mental Hygiene released a proposal affecting restaurants with 15 establishments or more in New York City, along with some movie theaters and ballpark concession stands. Officials said about 10 percent of menu items would require labels. The proposal requires restaurants to add a salt-shaker-like symbol on menus next to products that contain more than the recommended daily limit of 2,300 milligrams of sodium, about 1 teaspoon of salt.

The San Francisco board of supervisors voted unanimously to approve health warnings on ads for sugary drinks. Sugary drinks are defined as drinks with more than 25 calories from sweeteners per 12 ounces. The required warning, if it passes a second vote next week and gets the OK from Mayor Ed Lee, would read: “WARNING: Drinking beverages with added sugar (s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco.” The size of the warnings would be at least 20% of the ad space, which is the standard required by the FDA on tobacco warnings. The warnings will only apply to advertisements posted after the effective date of the legislation. While soda cans and bottles would not have to carry the warning, print advertising within the city limits would. Examples are billboards and vehicles. The board also passed two other proposals; one to ban soda ads on city-owned property and another to prohibit city funds from being used to buy soda.

House Agriculture Committee Considers GMO Labeling Bill

On July 15th, the House Agriculture Committee passed HR 1599, the Safe and Accurate Food Labeling Act of 2015, by a voice vote. The bill, sponsored by Reps Pompeo (R-KS) and Butterfield (D-NC), would create a voluntary non-GMO label certification program at USDA, similar to the National Organic Program, and preempt state labeling laws creating one national standard. We are hopeful the bill might receive floor consideration before the August recess. NGA sent a joint letter of support of the bill to members of the Committee in advance of their consideration.

Path Forward on COOL Still Unclear

The Senate has still not figured out how to address mandatory Country of Origin Labeling (COOL) in light of the recent WTO decision and the House acting to repeal COOL for beef, poultry, and pork products. NGA continues to advocate for the Senate to pass a repeal bill prior to adjourning for the recess.

USDA Plans to Expand SNAP to Cover Home Delivery of Groceries

Agriculture Secretary Tom Vilsack has outlined a proposed rule that would allow some Supplemental Nutrition Assistance Program beneficiaries to use their benefits to receive grocery shopping and home delivery services from government or non-profit programs. People with disabilities and the elderly who are home-bound would be eligible and the USDA will conduct a one-year pilot program before finalizing the rule.

WV OMEGA Announces 2015 Scholarship Recipients

We recently announced our annual college scholarship recipients for the 2015-2016 school year.

"Education is an essential part of our lives and providing our state's youth with the opportunities to receive a quality education is a key in moving West Virginia forward. We are extremely pleased to be in a position to support our members, their employees and families in furthering their education," said Jan Vineyard, president of OMEGA. "Our eleven scholarship recipients are exceptional in every way. They not only excel academically in the classroom but also take active roles in their communities, on their athletic teams and at their workplace. We congratulate our recipients and wish them the best of luck."

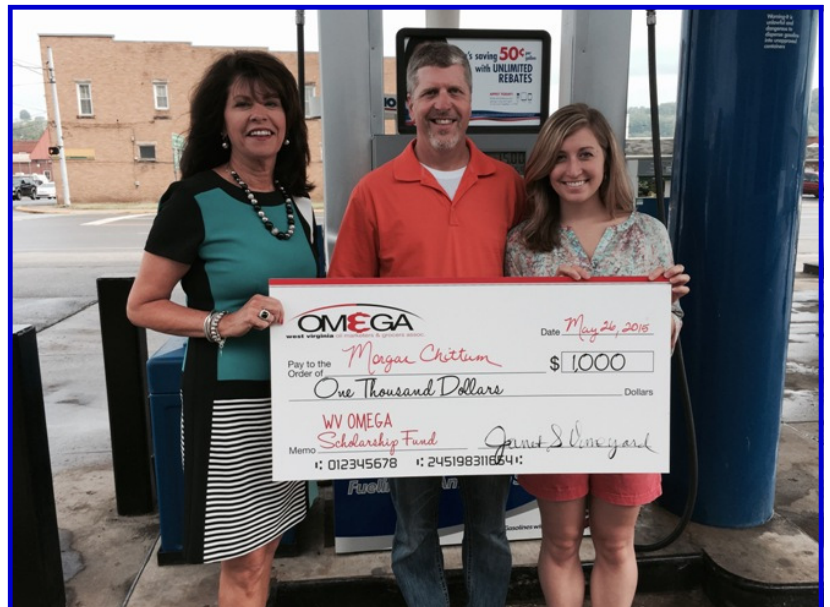
Scholarship recipients for the 2015-2016 school year include:

- ◆ **Kyle Braden Bush** (Ashland, KY) - Speedway LLC
- ◆ **Morgan Renee Chittum** (Barboursville, WV) – C & D Food Stores Inc.
- ◆ **Caroline Elizabeth Clevenger** (Louisa, KY) - Wheeler & Clevenger Oil Co.
- ◆ **Brandon Michael Hansford** (Beckley, WV) – Little General Stores Inc.
- ◆ **Justin Adam Meadows** (Hinton, WV) - R.T. Rogers Oil Company
- ◆ **Larry Dean Miller** (Beckley, WV) - One Stop
- ◆ **Katherine Leann Plas** (Sardis, OH) - Witschey's Galaxy Foods
- ◆ **Taylor Darlene Rhodes** (Sissonville, WV) - One Stop
- ◆ **Joshua Nathaniel Stephenson** (Huntington, WV) - Go-Mart Inc.
- ◆ **Victoria Elizabeth Walker** (Point Pleasant, WV) - City Ice & Fuel Company Inc.
- ◆ **Austin Renick Williams** (Old Fields, WV) - Old Fields Country Store LLC

Congratulations to all! Below and on the following page are pictures of our winners.



Brandon Michael Hansford
Little General Stores



Morgan Renee Chittum
C & D Food Stores



Austin Renick Williams
Old Fields Country Store LLC



Larry Dean Miller
One Stop



Kyle Braden Bush
Speedway LLC



Victoria Elizabeth Walker
City Ice & Fuel



Joshua Nathaniel Stephenson
Go-Mart Inc.



Caroline Elizabeth Clevenger
Wheeler & Clevenger Oil Company



Katherine Leann Plas
Witschey's Galaxy Foods




Miscellaneous

Every Child Deserves a Loving Home Campaign

After the announcement of our very successful Every Child Deserves a Loving Home Campaign, we received a note from First Lady Joanne Jaeger Tomblin:

*Dear Ms. Vineyard,
Thank you so much for the update and the figures regarding the Every Child Deserves a Loving Home Campaign. This campaign is a wonderful way to help those who are so helpless. It truly is my privilege to participate and to be asked to host the start of this endeavor here at the Governor's Mansion year after year. The work that you are doing will continue for many years to come and truly is making a difference in the lives of countless children in our area. I know that the \$80,325.00 figure will make a tremendous impact in the lives of West Virginia's children. Thank you for allowing me to be a part of this wonderful program. Good Luck in the future and always know that the Governor and I support your efforts. With warmest regards, Joanne Jaeger Tomblin, First Lady of West Virginia.*

Calendar of Events



**2015 Children's Charity Golf Outing & Awards Banquet
September 21 & 22
Stonewall Resort
Roanoke, WV**

Welcome New Member!

**Custom Branding Solutions, dba
BrandRPM WV**
422 9th Street, Suite 200
Huntington, WV 25701
Phone: 304.389.1262
Email: jimw@brandrpm.com
Contact: Jim Wentz

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Death

Will

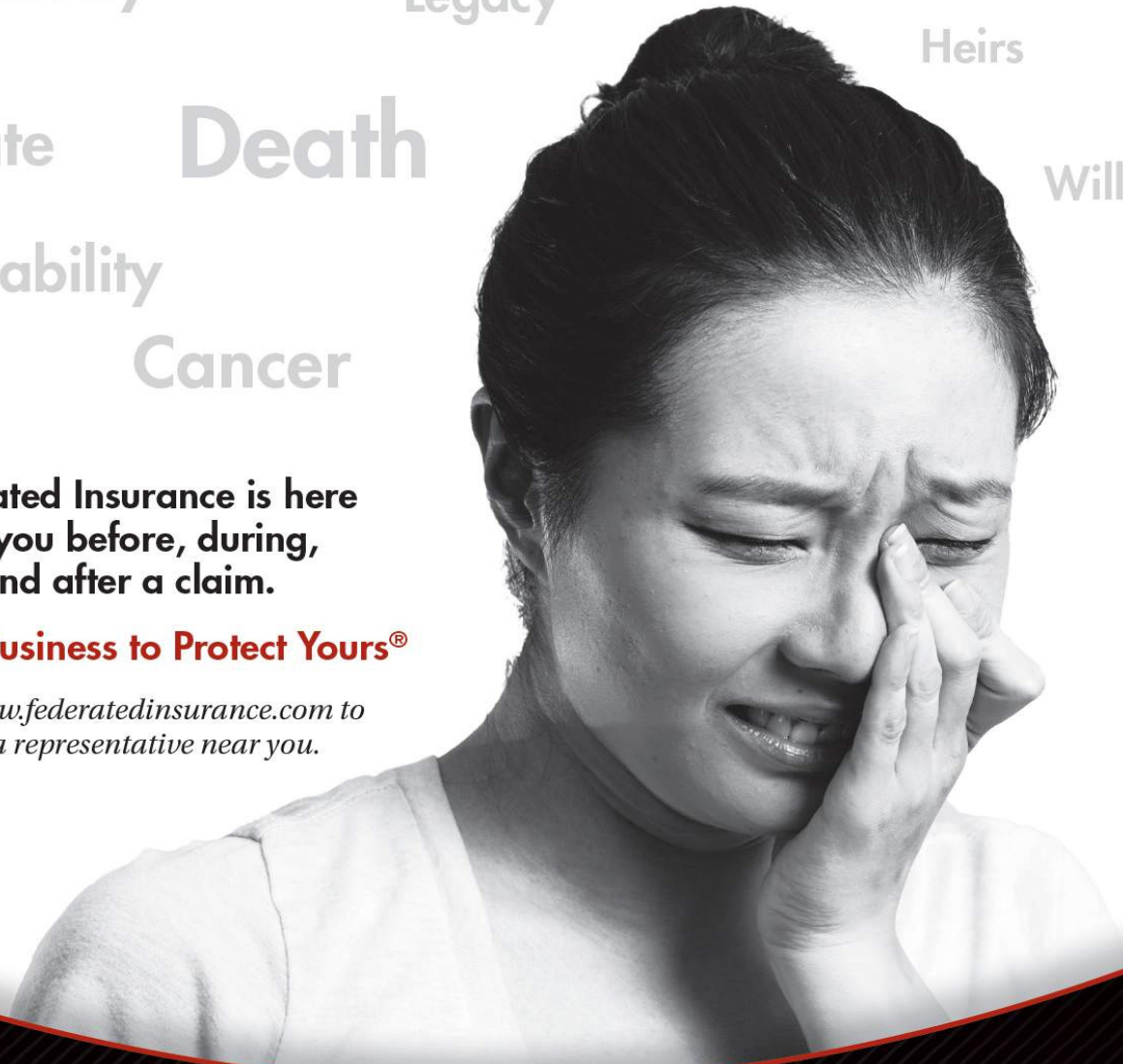
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