PA 12-4—SB 457
Emergency Certification

AN ACT CONCERNING A CAP ON THE PETROLEUM PRODUCTS GROSS EARNINGS TAX AND PENALTIES FOR ABNORMAL PRICE INCREASES IN CERTAIN PETROLEUM PRODUCTS

SUMMARY: This act caps at $3 per gallon the amount of gross earnings from gasoline and gasohol subject to the petroleum products gross earnings tax.

It bars petroleum products distributors from including in any billing for the first sale of any petroleum products in the state any amount representing the gross earnings tax that exceeds their gross earnings tax liability. The act (1) gives the Department of Consumer Protection (DCP) commissioner the discretion to investigate complaints to enforce this provision and (2) starting April 15, 2012, makes a violation of this provision an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND). It specifies that the CUTPA violation is in lieu of existing penalties under the petroleum products gross earnings tax law.

The act specifically includes number 2 home heating oil used exclusively for heating purposes and gasohol in the definition of an energy resource covered by the law that prohibits excessive pricing.

In addition, the act (1) deems the 90 calendar days after its passage (until July 2, 2012), to be a period of an abnormal market disruption in the price of energy resources and (2) establishes the amount of any subsequent increase in the wholesale price of gasoline or gasohol that must be deemed an abnormal market disruption. By law, during the period of a disruption, all energy resource sellers are barred from charging an "unconscionably excessive price" (see BACKGROUND).

The act establishes a new fine of up to $10,000 for each market disruption violation in addition to the civil actions the attorney general may already seek and CUTPA penalties that already apply.

EFFECTIVE DATE: Upon passage

PETROLEUM PRODUCTS GROSS EARNINGS TAX

Cap on Gasoline and Gasohol Gross Earnings

Under existing law, the petroleum products gross earnings tax applies to the gross earnings from the first sale of many petroleum products, including gasoline and gasohol, in Connecticut by petroleum products distributors. Under the act, if the price of gasoline or gasohol at such first sale exceeds $3 per gallon, the gross earnings from such sale is deemed to be $3 per gallon and any consideration the distributor receives in excess of that amount is exempt from the gross earnings tax.

The act allows the Department of Revenue Services commissioner to suspend, until no later than April 15, 2012, enforcement of the cap until all policies and procedures necessary to implement it are in place.

Billing for the First Sale of Petroleum Products

Under the act, petroleum products distributors are prohibited from including, in any billing for the first sale of any petroleum products in the state, any amount representing the gross earnings tax that exceeds their gross earnings tax liability. Violations are an unfair and deceptive trade practice. Complaints of such practices may be reported to the DCP commissioner who may require them to be reported on the department's website or in any other way he determines best serves the public's and department's interests.

The act gives the DCP commissioner discretion to consider the information presented to DCP before conducting investigations to enforce this provision. This information includes the (1) number of complaints, (2) geographic areas reporting possible violations, (3) increase or decrease in the number of complaints over time, and (4) credibility of the evidence presented.

ABNORMAL ENERGY RESOURCES MARKET DISRUPTION

The act (1) expands the definition of energy resources to specifically include number 2 home heating oil used exclusively for heating purposes and gasohol, (2) deems the 90 calendar days (from April 3 to July 2) after its passage to be a period of an abnormal market disruption in the price of energy resources, and (3) establishes the amount of any future increase in the wholesale gasoline or gasohol price that must be deemed an abnormal market disruption.

By law, sellers may not sell or offer to sell energy resources for an unconscionably excessive price during an abnormal market disruption or a reasonably anticipated one. The attorney general must post notice of the disruption's beginning and end dates on his website.

By law, the attorney general may file suit, on the DCP commissioner's referral, in the Hartford judicial district against anyone who violates these provisions to recover a civil penalty of up to $10,000 per violation and other equitable relief the court considers appropriate. In the case of a knowing violation, the attorney general can also seek double damages. A violation is also an unfair or deceptive trade practice.

GASOLINE AND GASOHOL

Price Increase Trigger

Under the act, after July 2, 2012, another disruption is deemed to occur when the wholesale price of gasoline or gasohol increases by at least 15% on any day over its price on any prior day within a 90-day period, resulting in a price of more than $3 per gallon.

The act prescribes the method for determining when the 15% price increase occurs. The Department of Energy and Environmental Protection (DEEP) commissioner determines the percentage increase by comparing the higher average price at either the "Hartford/Rocky Hill" or "New Haven" petroleum terminal with the lowest average price at either terminal during the prior 90-day period. The wholesale price is determined daily by using the calendar day average price for gasoline published by the Oil Price Information Service.

Under the act, if during an abnormal market disruption period another 15% price increase occurs, as described above, a subsequent new 30-day disruption is deemed to occur.

Notice

Under the act, the attorney general must post the required notice indicating the deemed 90-day abnormal market disruption established on the act's effective date. After that period, the DEEP commissioner must notify the attorney general and DCP commissioner when he determines that a price increase creates an abnormal market disruption. The attorney general must then post a notice on the day after the price increase, with an end date 30 days after the inception date. Upon notice, the attorney general or the DCP commissioner may immediately take any authorized action, which includes bringing or recommending a civil action against the seller.

Penalty

Under the act, the DCP commissioner may impose up to a $10,000 fine per violation on any large gasoline or gasohol seller using CUTPA procedures. A "large seller" is anyone engaged in the wholesale or retail sale, or both, of petroleum products in the state or in the wholesale sale of petroleum products consumed in the state who must register with the DEEP commissioner.

Enforcement

The act gives the DCP commissioner discretion to consider the information presented to DCP before conducting investigations to enforce this provision. This information includes the (1) number of complaints, (2) geographic areas reporting possible violations, (3) increase or decrease in the number of complaints over time, and (4) credibility of the evidence presented. Complaints of such practices may be reported to the DCP commissioner who may require them to be reported on the department's website or in any other way he determines best serves the public's and department's interests.

BACKGROUND

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violating a restraining order.

Abnormal Market Disruption

An “abnormal market disruption” is any stress to an energy resource market resulting from weather conditions, acts of nature, failure or shortage of an energy source, strike, civil disorder, war, national or local emergency, oil spill, or other extraordinary adverse circumstance (CGS § 42-234(a)).

Excessive Price During Market Disruption

Evidence of an unconscionably excessive price occurs when (1) there is a gross disparity between the amount the seller is charging and the amount he or she charged in the usual course of business just before the start of the disruption or just before the disruption is reasonably anticipated and (2) the seller’s charge was not attributable to additional costs incurred in connection with the sale of the product (CGS § 42-234(c)).

Gasoline Margins in Market Disruptions

By law, a seller may sell gasoline during a specified period if his or her average margin is less than the seller’s maximum margin during the 90 days prior to the disruption or imminent disruption. The specified period is the longer of either (1) the abnormal market disruption or imminent disruption or (2) 30 days following the attorney general’s notice date (CGS § 42-234(e)).

“Margin” means, for each grade of product sold, the percentage calculated by the following formula: 100 multiplied by a fraction, the numerator of which is the difference between the sales price per gallon and the product price per gallon and the denominator of which is the product price per gallon. Product price per gallon includes all applicable taxes (CGS § 42-234(a)(4)).

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