

## IN THIS ISSUE...

- 1 President's Message
- 1 Casino Night Notice
- 4 Editor's Notes
- 6 HVAC Tax Credits in Stimulus Package
- 8 Pearl - Changes To The FMLA
- 10 Chapter Establishes Scholarship
- 12 Shopping for Vehicle Repair Service
- 13 Night Out With The Mets Promo
- 14 Zisholtz - Proper Records, Timely Billing

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Greater New York Chapter  
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# Greater New York Contractors' NEWS



[www.accany.org](http://www.accany.org)

APRIL 2009

## President's Message

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W R I T -  
I N G T H I S  
M O N T H ' S  
P R E S I -  
D E N T ' S  
M E S S A G E,  
I was struck  
by the number  
of worthwhile  
activities of-  
f e r e d b y o u r  
G r e a t e r N e w  
Y o r k C h a p t e r o f A C C A a n d t h o s e o f t h e  
N a t i o n a l A i r C o n d i t i o n i n g C o n t r a c t o r s  
o f A m e r i c a . A C C A m e m b e r s h i p d u r i n g  
t h e s e c h a l l e n g i n g t i m e s i s a n e s p e c i a l l y  
g r e a t v a l u e t o c o n t r a c t o r s . Y o u r A C C A  
m e m b e r s h i p o f f e r s y o u a m y r i a d o f  
e d u c a t i o n a l , b u s i n e s s a n d n e t w o r k -  
i n g p o s s i b i l i t i e s w h e t h e r i n p e r s o n o r  
t h r o u g h o u r w e b s i t e s .



Ron Nathan

The 41<sup>st</sup> annual ACCA Conference  
and Indoor Air Expo was held in Fort  
*Turn to President's Message on page 3*

## GET READY FOR SOME



• Food • Drinks • Fun • Prizes •

**Thursday, April 2nd**

**Westbury Manor**

**6:30 to 10:30 PM**

**\$50 per person**

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## PRESIDENT'S MESSAGE *Continued from page 1*

Worth, Texas from February 24-26, 2009. Many speakers and workshops were offered to attendees. There were also opportunities to network with other industry contractors and participate in team building activities.

Eric Chester was the featured keynote speaker. His presentation on "Generation Why" offered helpful insights and strategies for recruiting, training, managing, motivating and retaining the youthful generation at the front lines of our businesses.

Numerous breakout workshops were open to conference participants. Subjects covered included service agreements, maximizing service profits, green issues, HVACR employee career paths, developing team leaders, managing vehicle costs, and using computers as marketing tools. The popular "I've Got an Idea" session allowed everyone in the room to share their best business ideas with the rest of the audience, and the Town Hall Meeting connected contractors from all over the nation in discussions of the important challenges and opportunities in our industry.

The importance of teamwork was the theme of the liveliest conference closing session yet. The Passing Zone entertained us with a demonstration of juggling unlike any other. These talented men have broken five Guinness World Records while relying on their careful teamwork to juggle unusual items such as bowling balls, chia pets, and running chain saws!

Fort Worth is a city of cowboys and culture. Within a few miles

of this small city's center, you can experience a real long horned cattle drive, beautiful art museums, outstanding barbecue, mile long freight trains and historic stockyards. A short "Cowtown" stroll revealed turn of the century architecture, amazing water gardens, custom cowboy hat shops and Texas Rangers controlling traffic on horseback. It was a lovely city, and the Texans I met were hospitable and charming.

Our local ACCA chapter meeting was held on March 5 at the LaGuardia Marriott. Jeff Goldberg was the featured speaker. Mr. Goldberg is an award winning sales professional and speaker with over three decades of sales, training, and management experience. Jeff Goldberg and Associates teach organizations to grow and prosper through sales training and consulting. According to Jeff, your organization can sell more and retain business by providing outstanding value to the customer. Success also lies in the ability to ask the right questions and listen carefully to the answers. We learned from Jeff that your prospective customers often tell you all the information you need to know to make the sale. Thank you to Jeff for an informative and entertaining presentation.

Casino Night will be held on Thursday, April 2 from 6:30pm to 10:30pm at the Westbury Manor in Westbury, NY. This fun-filled evening has been growing in popularity each year as more members and their guests attend this exuberant event. Please visit the Greater New York ACCA website to sign up and join us for the food, drinks, fun and prizes of our annual Casino Night. The cost is \$50 per person. See you there! — **Ron Nathan**

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#### Political Action

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Jim Carlson

## Editor's Notes

By Anthony N. Carbone

To stimulate business is not only the theme from the federal government in the high efficiency energy arena, but also air conditioning and heating equipment manufacturers and local utilities. They all realize with the focus on energy efficiency, it's an opportunity to get consumers to "buy."

There has never been a greater opportunity for homeowners to purchase new high efficiency home comfort equipment than now. The Obama administration, within its first six weeks in operation, created a stimulus package that would allow installation of new high efficiency equipment that would lead to a 30% of dollars spent as a bottom line tax credit, with a maximum of \$1500 for years, 2009 and 2010. The magic number as described by many (95% boilers or furnaces, 16 SEER A/C, 15 SEER HP) is \$5000 (\$5000 spent x 30% = \$1500 credit).

Tie this to a manufacturer's rebate for purchasing a system with high SEER rating, and you could have an additional \$600. In addition, the local utility, LIPA, has offered a high efficiency rebate for systems installed with Manual J and Manual D specifications. If you change your heating system to 95% efficiency or add a tankless water heater, energy star thermostat or outdoor boiler reset, you could have an additional \$1150. The rebates to consumers are astounding.

This is an opportunity for the independent contractor as well as the homeowner. For the first time, all of these agencies seem to be working in conjunction with the manufacturer, which puts the end user in a great position to install new equipment.

Now you should realize the buying habits of the average consumer have changed drastically. The mentality will be, "if my system is less than 20 years old and it still works fine, even with a stimulus package and manufacturer's rebates, I'm still not spending money if I don't have to." If a packaged high efficiency system is \$10,000-\$12,000, the net cost of \$7,000-\$8,000 could be too much to spend regardless of the incentives. With a "wait and see" overall attitude, many are waiting for the next shoe to drop.

The average non-institutional stock holder is the last leg holding the stock market above Dow 6500. If they further despair and throw in the towel, very few will be willing to spend unless absolutely necessary. These incentives are helpful in conjunction with many trying to save energy and a taste of skyrocketing energy costs.

I can assure you this will be a marketplace like no other this year. With stimulus, recession, job loss, refrigerant phase out, equipment phase out, you are witnessing a perfect storm. Are you prepared to weather this storm? Join us at ACCA monthly meetings, where the buzz is real time. Stay informed.

— Anthony N. Carbone



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# HVAC Tax Credits in 2009 Stimulus

by Charlie McCrudden

ACCA vice president of government relations

## Here's a summary of important HVAC-related tax credits included in the 2009 stimulus package.

On February 16, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law. The bill combines spending and tax incentives designed to get the American economy moving again by investing in our nation's road and energy infrastructure, and increasing the energy efficiency and performance of America's homes and commercial buildings.

Specifically for HVAC contractors, the new law makes important changes to existing tax incentives for homeowners who make qualified improvements of higher efficiency HVAC and water heating equipment to their primary residences.

For a list of equipment that qualifies for the tax credits, see spreadsheet that follows.

### Residential Tax Credit Details

#### Larger Tax Credit

For qualified improvements (see spreadsheet), home-

owners may be able to claim tax credits equal to 30% of the installed costs (up to \$1,500).

#### Longer Term

The new tax credits are retroactive to January 1, 2009, and expire on December 31, 2010. The \$1,500 limit is for all improvements made during the two year term, not \$1500 each year.

#### Per-Appliance Caps Removed

Homeowners may use the entire \$1,500 tax credit limit on a single qualifying improvement. The previous per-appliance caps that limited the homeowner to just \$150 for a high efficiency furnace or \$300 for a high efficiency central air Conditioner or heat pump have been removed.

#### Lifetime Limit Removed

Homeowners that previously claimed tax credits in 2006 or 2007 are eligible for the full \$1,500 limit.

#### Expanded Geothermal Tax Credits

Homeowners who install geothermal heat pump systems may be able to claim up to 30% of the installed

Anthony Capone, CIC  
John Glanzman, CIC  
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costs in tax credits in the year the system is placed into service. The \$2,000 tax credit limit has been removed. The geothermal tax credit has a longer term, from January 1, 2009 and expires December 31, 2016.

HVAC contractors should be aware that the \$1,500 limit applies to many types of energy efficient home improvements, including windows and doors, roofing

shingles, and insulation. All of these contractors will be competing for the work related to these tax credits.

If you are preparing marketing materials, make sure you include information about these tax credits.

**For more information, including frequently asked questions about the new tax credits visit the ACCA website at [www.acca.org](http://www.acca.org).**

### Qualifying Equipment for Tax Credits

Credits Limited to 30% of Installed Costs (up to \$1,500, except for geothermal) in the tax years 2009 and 2010.

#### Equipment

#### Minimum Energy Efficiency Standard to Qualify for Tax Credit

#### Electric Air Source Heat Pumps

Split Heat Pumps	Package Heat Pumps
15 SEER	14 SEER
12.5 EER	12 EER
8.5 HSPF	8 HSPF

#### Central Air Conditioners

Split System	Package System
16 SEER	14 SEER
13 EER	12 EER

#### Geothermal Heat Pump\*

*Credit is equal to 30% of total installed cost, no \$ limit.*

Closed Loop	Open Loop	Direct Expansion
14.1 EER	16.2 EER	15 EER
3.3 COP	3.6 COP	3.5 COP

#### Natural Gas Furnace

95% AFUE

#### Natural Gas Hot Water Boiler

90% AFUE

#### Propane Furnace

95% AFUE

#### Propane Hot Water Boiler

90% AFUE

#### Oil Furnace

90% AFUE

#### Oil Hot Water Boiler

90% AFUE

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## People & The Workplace

By Alan B. Pearl,  
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY  
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

### Changes to the FMLA

New changes were signed into law that will impact the Family and Medical Leave Act of 1993 ("FMLA"). The Department of Labor has issued new rules which went into effect on January 16, 2009 regarding the National Defense Authorization Act of 2008 ("NDAA"), which amends the FMLA to extend up to 26 weeks of leave to military families caring for a member of the Armed Forces suffering from a serious illness or injury.

The NDAA amends the FMLA to provide new military family leave entitlement. Briefly, the FMLA applies to all private employers with 50 or more employees. These employers must provide an eligible employee with up to 12 weeks of unpaid leave for certain qualifying leave entitlements.

One significant change is that the NDAA amends the FMLA to provide two new leave entitlements. The first is the Military Caregiver Leave (also known as Covered Service

member Leave): Under the first of these new military family leave entitlements, eligible employees who are family members of covered service members will be able to take up to 26 workweeks of leave in a "single 12-month period" to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty. This provision also extends FMLA protection to additional family members. A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, **or next of kin** of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a "single 12-month period" to care for the service member.

A second significant change is the addition of Qualifying Exigency Leave: The second new military leave entitlement is meant to help families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. Exigency is defined in the statute as including the following

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- Rest and recuperation;
- Post-deployment activities; and
- Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

Employers should note that the DOL has also changed the text of the forms and notices employers must provide employees. The forms include a notice of eligibility and rights and responsibilities, as well as a designation notice.

### **Re-Employment of Military Personnel**

With the large number of reservists called to active duty in recent years, most employers may have heard of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). If not, the Department of Justice ("DOJ") wants to ensure that all employers do now. The DOJ filed a record number of USERRA suits in 2008 against employers.

The DOJ announced on March 4, 2009, that it resolved two complaints for USERRA violations, on consent of both sides. The first complaint was against an Oregon-based business for failing to re-employ a reservist following an absence for reservist training. The second complaint was against a company for failing to re-employ Michigan veteran after a three-year tour of duty.

USERRA strengthens the Veterans' Reemployment Rights (VRR) Statute by protecting civilian job rights and benefits for veterans, members of reserve components, and even individuals activated by the President of the United States to provide Federal Response for National Emergencies.

Briefly, USERRA applies to all employers in the United States. Returning service-members are to be reemployed in the job that they would have attained had they not been absent for military service. This is called the "escalator principle" Returning employees must have the same seniority, status and pay, as well as other rights and benefits determined by seniority. USERRA also mandates that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.

While on military leave, a person is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights and benefits accorded other individuals on comparable types of non-military leave. Most importantly, an employer is generally required to comply with the reinstatement provision of USERRA unless the leave extends beyond five years.

What employers should learn from the above is that USERRA requires certain obligations, such as:

- non-discrimination based on military status; rein-

statement rights to the position and pay that the employee would have held had the employee remained continuously employed;

- continuation of medical benefits for service under 30 days;
- optional continuation of medical benefits;
- all seniority, rights and benefits upon return to work as if the employee had remained continuously employed; and
- protection from discharge upon return to work, except for cause, for a period of time.

### **New York WARN Law Now Effect**

If you have 25 employees or more you are now covered by a new WARN statute. This statute requires qualifying employers give 90 days' notice to the affected employees, as well as certain state agencies. Layoffs are now more difficult to enact than ever before. Contact this office for the particulars.

### **New COBRA law**

The Cobra law was amended to provide that effective September 1, 2008; those employees eligible to COBRA now pay only 35% of the premium. The employer pays 65%. How does the company recover its expenditure? Answer-through credits on your IRS 941 payroll reports. For more information call me at 516-921-6645.

As always, should this article raise any questions you can also reach me at ABPearl@pmphr.com. •

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# Chapter Establishes Ongoing HVAC Scholarship At Suffolk Community College

**By John Ottaviano,  
Scholarship Chairman**

It has been a long time coming, but the Greater New York Chapter of ACCA has established an ongoing HVAC scholarship at Suffolk County Community College through the Suffolk Community College Foundation. This scholarship has been created in order to attract young, mechanically inclined high school graduates into a career in the HVAC industry and to help increase the skilled labor pool for member contractors. The chapter has provided \$13,244.68 in funds to establish this scholarship which will be renewable for qualifying candidates. The scholarship candidate selection criteria are as follows:

*Awarded to a graduating high school senior enrolling in the SCCC HVAC program with the intention to enter into the HVAC Industry. Full or part time enrollment in HVAC AAS Degree Program is required. Must submit a brief statement of personal goals and intent to enter into a career in the HVAC Industry. Must maintain a 3.0 cumulative GPA to qualify for continuing scholarship award. Application and recommendation of HVAC Program Director required for continuing award.*

The structure of the funding is as a pass-thru scholarship with the initial funding mentioned previously and an annual contribution supplementation in the amount of \$1000. There will be a minimum initial annual award of \$500 per semester, \$1,000 per year, to entering full or part time HVAC Program student(s). There will be \$2,000 in total awards in second year as there will be most likely be two students (first and second year) in rotation at all times, if things go as planned.

Eugene Silberstein, Coordinator of the HVACR



*New HVACR Facility now under construction at Suffolk County Community College will open in fall 2009*



program, will be working with Mike O'Rourke of Best Climate Control Corp. and myself, to see if we can get the process of finding and selecting possible candidates started. Anyone else interested in serving on this committee should contact me via email (jottaviano@airideal.com). A committee of ACCA members shall meet with the program coordinator to choose among applicants for the scholarship each semester. Scholarship candidates shall be eligible for internship with any ACCA member contractor who chooses to participate.

It is intriguing that this new scholarship will coincide with the opening of the new HVACR facility at SCCC this fall. It is our hope that the administration will help in finding qualified candidates, list this scholarship in the SCCC Scholarship Opportunities pamphlet for the upcoming 2009-2010 school year and work with ACCA in this effort to promote careers in the HVACR contracting industry to new students. •

### On The Move/People In the News

If you are "on the move" or your company is doing something that will be of interest to other members, let us know. We'd like to publish it. Email the information (photo too if available) to Don Gumbrecht at [dgumbrecht@aol.com](mailto:dgumbrecht@aol.com).

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## Shopping For Service For Vehicle Repairs

By Kelly Hiner, Group Sales Manager for Enterprise Fleet Management in New York. She can be contacted at 973-709-2499.

Businesses with medium size fleets will get optimum performance and maximum value out of their vehicles by properly maintaining them. But, always knowing what maintenance is truly valuable, when it is really needed, and whether the garage that's selected is doing it properly can be challenging. Even something as simple as checking tire pressures depends on regular attention and accuracy.

While many businesses choose a managed vehicle maintenance program, which is designed to eliminate the guesswork and ensure quality repairs, others choose to allow their drivers to monitor and manage maintenance and repairs. For those businesses, shopping for service requires advance homework and planning.

Not all automotive repair shops are created equal. It's important to choose a trustworthy facility that is well-qualified to do the necessary work and will stand behind the job they do to ensure the best possible results.

**Compare repair shops before you need one.** In addition

to asking business colleagues and friends for recommendations on shops that have performed quality work for them in the past, check the shop's qualifications. Ask whether the shop is involved with professional organizations such as the National Institute for Automotive Service Excellence (ASE). Ask if technicians have received advanced technical training, if they are ASE certified, and in what areas of automotive or truck repair are they certified. In addition, check to see if the work area is clean, well lit, organized and equipped with the proper tools to handle the diagnostics and repairs on today's complicated vehicles.

**Verify commitment to ongoing training and customer satisfaction.** One way is to look for decals or plaques indicating the shop's current membership status in industry associations, local business groups and consumer agencies such as the Alliance of Automotive Service Professionals (AASP), Automotive Service Association (ASA), ASE Blue Seal of Excellence, and the Better Business Bureau. Verifying information on the BBB Web site at [www.bbb.org](http://www.bbb.org) will indicate whether the shop maintains a good reputation.

**Review price estimates for work and parts.** Get a written repair and price estimate of the work to be performed, as well as an explanation of why specific recommendations

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are necessary before the job begins. Also obtain an itemized list for all parts and services, with prices, identifying any used or re-manufactured parts.

**Ask about a warranty.** Professional, reputable repair shops will stand behind their repair work by offering a warranty. Usually this warranty is for a specific time and/or mileage – from 30 days to lifetime or 3,000 to 36,000 miles. The warranty should cover materials used, parts, and labor for installation. Although parts usually are covered by the manufacturer's warranty, that is the repair shop's responsibility. Work done by an unauthorized repair shop may void the warranty.

**Don't shop for price alone.** The lowest estimate could indicate that the service advisor has improperly assessed the vehicle or that the shop is doing only a quick, inexpensive repair to get the work. If you get a quote that is significantly different from another shop, ask the service advisor to explain why the quote is so different before you make a decision about where to have the car repaired.

**Think about satisfaction after repair.** Inquire in advance about the repair shop's policy in the event the repairs do not fix the problem. Will they fix it at no additional charge and how long will the additional repairs take? Once the repair is completed, verify that the problem has been fixed before leaving. It is best to bring up any concerns immediately in order to confirm a problem is a result of incorrect repair work. If you do happen to notice a problem after you get the car home, call the repair shop immediately and let them know that you'll be returning with your automobile to have your concerns addressed.

**Ask about customer service.** Determine in advance whether the shop provides transportation from the shop to the place of business, provides a loaner car, has weekend and/or evening hours, or offers a discount for work done on Sundays.

Automotive problems can be frustrating, time consuming and often very costly. Although many automobile repairs cannot be totally avoided, following the above tips can go a long way in making automotive repair a better experience. •



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## ***Statement From Stuart S. Zisholtz, Esq.***

### **Importance Of Proper Records, Timely Billing**

Every so often I come across a decision that causes me to scratch my head. I am continuously mesmerized by the weird and sometimes difficult decisions that are rendered by the Court.

Recently, the Court rendered a decision against a construction manager for its complete incompetence in submitting its monthly requisitions.

In that case, a construction manager, working on a time and material basis, had a contract with an owner which provided that the construction manager had to submit monthly requisitions for reimbursable expenses. At the conclusion of the project, the construction manager reviewed its books and records and discovered that it inadvertently failed to bill \$197,304 for insurance premiums. The owner had budgeted \$75,000 for insurance and was billed over a nine-month period, the sum of \$86,331.14.

Upon discovering the error, the construction manager submitted an additional bill to the owner. The owner rejected the bill because it was not billed promptly pursuant to the terms of the contract. The owner also argued that this alleged error prejudiced it and prevented it from taking timely action to control its bills and reduce its

expenses.

The construction manager argued in response that the owner should not obtain a windfall and should pay the reimbursable item.

The Court held that the construction manager failed to follow the terms of the contract by not submitting the timely invoices for the insurance to the owner. Since the construction manager was the only party which had full knowledge of the actual cost and waited until the end of the project to discover its error, it should not benefit from such negligence and incompetence. Therefore, the Court concluded that the failure to submit the bills in accordance with the contract requirements was a material breach of the contract and the construction manager was not entitled to any further reimbursement. If the owner received a windfall, it was due solely as a result of the construction manager.

Arguably, the Court has the power to render an equitable decision in order to be fair to all sides. This decision, however, appears to be extremely harsh. The owner is clearly obtaining a windfall at the expense of the construction manager.

The Court could have compelled the owner to pay the requisition which was inadvertently omitted in earlier billings. Instead, the Court argued that the four corners of the contract required the billings to incorporate everything



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to date and, therefore, the construction manager waived its right to recover a reimbursable expense.

The key to this decision is to maintain proper records and submit the billings in a timely fashion pursuant to the terms of the contract. If you fail to do so, you may lose your right to collect the outstanding balance due.

#### Never Let Your Lien Time Run Out!

For a free copy of a pamphlet pertaining to payment bond claims and Mechanic's Liens, kindly contact me or the association.

*Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200. •*

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