

Cigarette tax issue smolders in New York State

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MASTIC, N.Y. - The taxation of reservation sales of cigarettes is burning hotter than ever as a New York state political issue, weeks after Republican Gov. George Pataki tried to stub it out until after he left office.

Democratic State Attorney General Eliot Spitzer, a leading candidate to succeed Pataki in this year's elections, seems determined to keep it alive, with the help of assorted allies. Spitzer is calling for enforcement of the state Legislature's budget mandate to collect the tax as of March 1. Pataki vetoed an earlier version of the legislation two years ago and called for a one-year extension of the deadline in his budget message in February.

But state tribes have encountered increasing pressure from several directions. Responding to statements from Spitzer, the main cigarette distributor to the Seneca reservations temporarily suspended deliveries. (They resumed after the State Department of Finance and Taxation provided the distributor with a protective letter.) Spitzer enlisted the senior U.S. senator from New York, Charles Schumer, a Democrat, to introduce a bill prohibiting the U.S. Postal Service from delivering cigarettes purchased over the Internet, a major business for Seneca Nation entrepreneurs. And on March 20, the New York supermarket chain Gristede's Foods Inc. threatened to sue the two state-recognized Indian nations on Long Island and their senior tribal officials for undercutting its own cigarette sales.

Chief Harry Wallace of the Unkechaug Indian Nation, a main target of the suit, promised a vigorous counterattack. "We are exploring all possible responses to this suit, including an aggressive countersuit for these outrageous claims by this multi-billion-dollar corporation," he told Indian Country Today.

Gristede's released a draft of its complaint to New York metropolitan newspapers several days before it was filed in the U.S. District Court in Brooklyn.

The draft complaint alleged: "The illegal trade in these discounted Indian-sold cigarettes has spawned, with the defendants' knowledge and active participation, a thriving black market of discount cigarettes that funds gangs, organized crime and international terrorist groups such as Hezbollah, and which promotes juvenile and teen smoking." It supported the charge with several out-of-context quotes from a recent New York Times series on smuggling through reservations, which was widely criticized in Indian country. The quote, among other things, said that Indians were building "their own violent Mafia-like enterprises."

The complaint listed the U.S. civil Racketeering Influenced and Corrupt Organizations conspiracy statute as its federal cause of action. It specifically named the Unkechaug Nation, which is based on the Poospatuck Reservation in Mastic; Wallace; and the nation's main enterprise, the Poospatuck Smoke Shop and Trading Post. It also named the Shinnecock Indian Nation in Southampton; three past and present tribal leaders; and Shinnecock Ltd., a tribally affiliated business that sells cigarettes.

In a significant ploy, it also included 100 John Does as defendants, explaining that these presently unknown parties were "smoke shops, individuals and businesses that sell cigarettes in New York to non-Indians, who are not authorized resellers, without charging State and local excise and sales." This wide net, according to the complaint, included sales both on and off Indian lands. Gristede's said it would amend the complaint "to allege their true names and capacities when ascertained."

The presence of this open-ended list of John Doe defendants allowed Gristede's to tar the named defendants with allegations of every form of "black market" illegality, such as counterfeiting cigarette tax stamps and funding "organized gang activity, organized crime and international terrorism." These allegations referred ambiguously to "the defendants" without specifying whether they were the named or fictitious ones.

Wallace denounced the complaint as "slanderous" and questioned whether it would go anywhere in court. He said that tribal sovereign immunity was "absolutely" a defense. He also detected the hidden hand of Spitzer behind the well-publicized release of the draft.

Gristede's Foods is a unit of the Red Apple Group, which owns several chains of supermarkets and convenience stores as well as a subsidiary, United Refining, which distributes fuel to gasoline stations throughout New York state. Its president, John Catsimatides, is a major Democratic Party contributor with an intricate relationship with Spitzer.

Spitzer was openly a factor in the week-long interruption of cigarette deliveries to Seneca Nation retailers. The wholesaler, Milhelm Attea & Bros. Inc., cited uncertainty over its immunity from liability for state sales tax collection. The state system relies on wholesale "stamping agents" to affix tax stamps to cigarette packs before they are shipped to retailers. The law exempts transactions the state is constitutionally barred from taxing, such as reservation sales to Indians.

The Attea company, a registered Indian trader and the major supplier to Seneca businesses, was the defendant in the 1994 U.S. Department of Taxation & Finance of New York v. Milhelm Attea & Bros. Supreme Court case, which upheld the state tax department's plan to collect taxes on reservation sales to non-Indians.

The state tax department resolved the crisis within days by issuing a letter protecting Attea from prosecution, but Indian-owned retailers on Seneca territory had nearly exhausted their stocks and were rationing sales to customers. The suspension, said Wallace, was a "wake-up call" to Seneca leaders.

Seneca President Barry Snyder Jr. issued a statement March 15 promising steps to develop a "Nation-protected wholesale supply."

"In recent days, it has become obvious that the Nation must do more to protect its economy," Snyder said. "We have relied on the good word of Governor Pataki that our treaties and sovereignty would be respected and that the Nation's economy would not be harmed. But the actions of Attorney General Spitzer to threaten and intimidate wholesalers is interfering with official State policy.

"We are left with no choice but to develop a protected source of tobacco products to ensure that the Nation and its people are not denied the ability to consume and trade these products on our territory. We will work in partnership with our business community to develop the business and regulatory approach necessary to ensure that our treaty-protected right to the 'free use and enjoyment' of our lands is secured."

Although Snyder did not spell out a strategy, federal courts have held that items with value added through on-reservation processing are not subject to state wholesale taxation. The manufacture of cigarettes has emerged as a booming reservation business. Snyder's statement was his second within a week in response to Spitzer's actions. On March 10, he denounced Spitzer and Schumer for sponsoring a bill to keep tobacco products from being shipped via the U.S. mail. Spitzer had earlier pressured private delivery services to stop shipping cigarettes from Seneca Nation suppliers.

"That Attorney General Spitzer and Senator Schumer would call Senecas who sell cigarettes as being part of a 'massive criminal enterprise' is to malign the entire Seneca Nation and its people," said Snyder.

"Despite the Attorney General's misrepresentations, selling tobacco products in Seneca nation territory does not violate any law.

"On behalf of the Seneca people, I believe that Attorney General Spitzer and Senator Schumer owe us an apology for their inappropriate and disrespectful attack on our good name."

Cigarette taxes spawn campaign scandals in New York

ALBANY, N.Y. - Campaign money is like oxygen for the cigarette tax controversy in New York state. Although it might not get the same press as Jack Abramoff's fund-raising from Indian tribes, the opponents of Native interests have won political influence - even with the supposedly squeaky-clean state Attorney General Eliot Spitzer - through a network of campaign contributors.

Political Action Committees for convenience stores and gasoline distributors have targeted politicians on both state and federal levels. Their contributions have been closely connected to the state Legislature's attempt to force tax collections on reservation businesses. Since 2003, the Legislature has directed Gov. George Pataki and the state Department of Finance and Taxation to tax reservation sales to non-Indians, in spite of Pataki's long-standing promise to respect tribal sovereignty and public opinion solidly behind the no-tax policy. (A recent Zogby International poll showed at least two-thirds of state voters opposed the reservation tax.)

Spitzer, a major opponent of reservation cigarette sales, has received frequent contributions from these groups. He also has an intricate relationship with John Catsimatides, a major Democratic Party contributor and owner of Gristede's Foods Inc., which on March 20 received wide publicity for a "draft complaint" for a potential federal lawsuit against two state-recognized tribes on Long Island. Gristede's is a unit of Catsimatides' Red Apple Group, which owns other New York supermarkets and convenience stores and is a fuel distributor for regional gasoline stations.

A target of the "draft complaint," Chief Harry Wallace, of the Unkechaug Nation, said he believed Spitzer was behind the threatened Gristede's suit. He noted a connection between Spitzer and Catsimatides, which began in 2003 when the attorney general's office sued Gristede's. The suit, filed jointly with the National Employment Law Project, charged that the supermarket grossly underpaid its full-time delivery staff, immigrants who received between \$70 and \$95 for a 60-hour work week. Spitzer settled the suit in December 2003 for a \$3.25 million payment of back wages and fees, but without civil penalties.

A second suit is currently under way, charging Gristede's with exploiting its in-house workers. The attorney general's office is not participating.

In the meantime, Catsimatides has emerged as a major behind-the-scenes Democratic fund-raiser. Although his name rarely appears on campaign contribution reports, he receives major donor treatment at Democratic functions. He was especially close to President Bill Clinton, staying overnight in the Lincoln bedroom at the White House and giving a large donation to the Clinton Presidential Library. He was one of 24 co-chairmen of a Westchester County fund-raising dinner in 2005 featuring Spitzer.

PACs representing New York state retailers and gasoline stations have also sent money to Spitzer, as well as to key state legislators. The New York Retailers for Effective Government gave him \$1,500 during the 2003 - '04 election cycle for a governor's race he didn't make. The Empire State Petroleum Association and its PAC sent him \$5,500 during the same period. (Contributions for the 2006 election are not yet available.)

These two groups, plus the New York State Association of Convenience Stores/Convenience PAC, have also given substantial sums to state legislators actively pushing the bill to force taxation of reservation sales. One of the most prominent of the bill's sponsors, Republican State Sen. Michael Nozzolio, received \$5,400 from the three groups during 2003 and 2004, when the bill first passed the Legislature. State Sen. Nicholas Spano, chairman of the Senate Committee on Investigations, Taxation and Government Operations, received \$8,500. Spano's committee released a report on the reservation tax issue in 2003 claiming that non-collection damaged the state's small businesses.

New York state businesses are also supporting national PACs fighting tribal tax sovereignty through federal legislation. Executives of the Nice N Easy Grocery Shoppes in Canastota, N.Y., gave \$3,500 last year to the National Association of Convenience Stores' PAC. The Nice N Easy store competes with the Sav-On chain, owned by the Oneida Indian Nation. (Indian Country Today is published by Four Directions Media, another OIN enterprise.)

NACSPAC, surprisingly, also received a contribution from an associate of Abramoff. Allison Shulman, a partner in the now-defunct Alexander Strategy Group, gave the convenience store group \$365 in March 2005. Six months later, she went to work for NACSPAC as director of government affairs.

