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City sues wholesalers on cigarette tax

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Attorneys for New York City filed a lawsuit yesterday alleging that seven tobacco wholesalers illegally sold millions of cartons of untaxed cigarettes to retailers on Indian reservations.

The lawsuit, filed in U.S. District Court, charges that the companies had failed to collect taxes on sales to those retailers since March 1 and seeks an injunction to stop the companies from selling the "unstamped" cigarettes.

The city contends that because "as much as half the retail prices of cigarettes sold in New York City is attributable to taxes," the retailers can profit greatly by selling cigarettes at prices far lower than those of retailers who sell cigarettes on which taxes have been paid.

The lower price "induces large numbers of city residents to purchase the unstamped cigarettes," the suit said, which, in turn, reduces sales tax revenue for the state and city.

The suit contends the practice costs the city millions in lost tax revenue annually and seeks payment for that amount, said lead attorney Eric Proshansky. Fines also could be imposed.

Two of the wholesalers are in the metropolitan area - Gutlove & Shirvint Inc. of Long Island City and Mauro Pennisi Inc. of Lindenhurst. The other companies are Milhem Attea & Bros. Inc. of Buffalo, Day Wholesale Inc. of Tupper Lake, Jacob Kern & Sons Inc. of Lockport, Windward Tobacco Inc. of East Amherst, and Capital Candy Company Inc. of Barre, Vt. None could be reached for comment.

The companies have 20 days to respond to the complaint.

New York City store owners have seen a 60 percent drop in cigarette sales since the last tax increase on tobacco products in 2002, said Richard Lipsky, who represents the Neighborhood Retail Alliance, a Manhattan-based advocacy group.

Sales of cigarettes and other goods by Indian-owned businesses to other Indians have been tax-exempt. But in 1994, the U.S. Supreme Court ruled that states can tax the goods that Indian businesses sell to non-Indian customers.

Last year, the New York State Legislature passed a law that would make Indian businesses charge non-Indians taxes on items such as cigarettes. New Yorkers are supposed to declare the amount of items they bought tax-free on their income tax forms. But state officials suspect that few do.

Enforcement of that law has stalled as the state's Department of Taxation and Finance has asked for revisions.

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