

Convenience store reps sue Pataki 5/03/06

By John Milgrim, Ottaway News Service

ALBANY -- The state's largest convenience store association sued Gov. George Pataki Tuesday to make him enforce a new state law requiring the collection of taxes from the sale of cigarettes and gasoline on Indian reservations.

"Governor Pataki's refusal to uphold his constitutional duties to enforce the law to collect these taxes is hurting taxpayers and small businesses alike," said James Calvin, president of the New York Association of Convenience Stores, the lead plaintiff in the case.

The law took effect March 1 and was enacted by a Legislature increasingly frustrated by Pataki's refusal to collect sales and excise taxes from reservation sales to non-Native Americans. Retailers argue that position costs the state \$450 million annually and costs non-reservation retailers more than \$1 billion in lost sales because prices on a tribal reservation undercut the minimum they could charge. The lawsuit also targets wholesalers accused of selling untaxed tobacco products to retail stores on Indian reservations, including Tupper Lake's Day Wholesale. A call to that firm seeking comment went unanswered Tuesday evening.

State and federal courts have long held the state has a right to collect sales and excise taxes on goods sold to non-Native Americans, but tribes across New York assert any move by the state to collect would infringe their sovereignty.

An attempt to collect cigarette taxes resulted in violence in the 1990s when the tribes moved to protect their sovereignty.

Brendan White, spokesman for the St. Regis Mohawks, said leaders at their Akwesasne reservation in western Franklin County have taken a variety of steps to negotiate with the state. Unlike tribes in central and western New York, their retailers don't have shops in mass market locations and they don't sell tobacco products over the Internet.

"The Tribal Council is not surprised by their (the convenience stores) actions and has always believed the state's concerns can be addressed through negotiations rather than litigation," White said. "The Tribal Council has stated several times that Akwesasne is not part of the state's overall tax problem and enforcement of the state collections will have a negative impact on the regional economy. Litigating the issue is costly and will impact the ability of all the parties to reach a negotiated resolution."

A study done for the State Health Department last year found that more than a third of New York smokers regularly avoid the state's high cigarette taxes by buying from Indian reservations, the Internet or duty-free shops. In 2005, 9.5 billion packs of cigarettes were sold in New York without being taxed or stamped.

Pataki, defending his position, said the state was not losing much in the way of tax dollars because most smokers seeking a tax break order cigarettes through the mail or the Internet.

"We have checked with the tax department and the counsel's office and we are confident we are doing what we are required to do by the law," he said. "I have always said, from the beginning, that the best way to do this is through a compact, through consensus, and we are going to continue to strive to do that."

A bill introduced in the Legislature would expressly prohibit cigarette makers from selling cigarettes to wholesalers who knowingly sell untaxed cigarettes.

"That would work a lot faster than the lawsuit," said Russell Sciandra of the Center for a Tobacco Free New York.

The Associated Press contributed to this report. E-mail John Milgrim at: jmottaway@aol.com