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Geneva, New York

State Supreme Court to hear lawsuit over cigarette sales tax

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Finger Lakes Times

WATERLOO — Legal arguments on why Seneca County's lawsuit against the state should be dismissed will be heard Friday in state Supreme Court.

The county filed suit May 15 against the state Department of Taxation and Finance, some cigarette wholesalers and the Cayuga Indian Nation and its enterprises in an effort to force the state to enforce a new law requiring the collection of sales taxes on gasoline and cigarettes sold to non-Indians at Indian-owned businesses.

The law went into effect March 1, after a number of delays, and has been ignored.

Seneca County Attorney Steven Getman Tuesday told the Board of Supervisors the state is not collecting money owed to the county from sales at Cayuga-owned LakeSide Trading Co. on Route 89 in the town of Seneca Falls. He said the Nation, which is named as an affected party, says it is sovereign and exempt from taxation.

Getman told supervisors the state, which is asking for the dismissal through the office of Attorney General Eliot Spitzer, will argue the county has no authority to sue it because it is a political subdivision of the state.

"The attorney general's papers also claim that the tax department has shown a 'reasonable basis' to not enforce the law," Getman said.

The Department of Taxation and Finance, in a March 16 advisory opinion to a Buffalo business that supplies cigarettes to Indian retailers, says it has a long-standing policy of allowing untaxed cigarettes to be sold from licensed stamping agents to recognized Indian nations and reservation-based retailers making sales from qualified reservations.

The document says it would be premature to enforce the collection law until pending issues are resolved concerning out-of-state sales by Indians, allowing qualified Indians to purchase tax-exempt products from any qualified reservation and negotiating tax agreements with the various nations.

Getman believes Seneca County is the only county to have filed suit. He will argue on its behalf and report back to the board.

"Following Friday's hearing, the judge can make a decision, reserve a decision or adjourn the case for further proceedings depending on the presentations made to the court," Getman said Wednesday.

The new law would have taxes collected at the distributor level instead of the retail level.

"I think what is important here is that Seneca County feels we are entitled to this relief because these taxes are

imposed at the local level," Getman said. "The law requires the state to collect them for us and to hold that money in trust for the county. They are depriving us of our own property to the detriment of our taxpayers and to competing businesses."

A similar petition against the state, filed by convenience store owners, is also scheduled to be heard Friday.

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