

Supermarket sues tribes over untaxed smokes

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March 21, 2006

A New York City supermarket chain filed a lawsuit in Brooklyn federal court yesterday claiming that two Long Island Indian nations and senior tribal officials have been illegally selling untaxed cigarettes to non-Indians, helping to create a thriving black market.

Gristedes said in its lawsuit that it lost more than \$20 million because smoke shops on the Unkechaug and Shinnecock reservations sold untaxed cigarettes at reduced prices, undercutting sales of non-Indian businesses in the metropolitan area. The suit described the smoke shops as black market suppliers "through their knowing and intentional complicity," funding gangs, organized crime and international terrorists such as Hezbollah.

"The disparity is huge, it's enormous, \$3 a pack and counting," said Gerald McKelvey, a Gristedes spokesman. "It [the lawsuit] is nothing more than trying to attain some equity here, level the playing field. It is not anti-Indian."

The state places a \$1.50 tax on every pack of 20 cigarettes in addition to taxes imposed by local municipalities, the suit notes. New York City has a \$1.50 tax on a pack. Cigarette sales to American Indian customers are exempt from taxes, but state law requires taxes to be collected on sales to non-Indian customers -- a law the tribes view as encroaching on their sovereignty.

Richard Lipsky, who represents the New York City-based Neighborhood Retail Alliance, said these state regulations have been unenforced. "The state has passed the law and the refusal of the governor to enforce the law does not mean you can operate without impunity like the tribes have been doing," Lipsky said.

But defendants Harry Wallace, Unkechaug chief and smoke shop owner, and Lance Gumbs, a former Shinnecock chairman and smoke shop owner, see the suit as a campaign aimed at "demonizing" two small communities.

Since December, the Suffolk County district attorney's office has cracked down on cigarette sales on reservations to non-Indian customers. A new law dictating how the state was to collect taxes from reservation sales to non-Indians was supposed to go into effect March 1. But the state commissioner of the Department of Taxation and Finance has delayed imposing the policy.

Wallace and Gumbs called the claims unfounded and politically motivated and said the suit disregarded the rights of their tribes, which are recognized by the state. Both objected to accusations that the shops fund terrorism and organized crime.

"It seems to be the rule of the day," Wallace said. "You want someone to get upset at someone, say they support terrorist activity. But all we are engaged in is the normal, lawful course of doing business."

But William Wachtel, the Gristedes lawyer, said he doubts a significant portion of the benefits from reservation cigarette sales are benefitting tribal members. "Let them open their books and if we're wrong, we'll be surprised but we will publicly apologize," Wachtel said.