



## TAXES ON NATIVE AMERICAN STORES PUT OFF AGAIN

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ALBANY — There's almost no chance the Pataki administration will begin collecting taxes on tobacco and gasoline from Native American merchants come March 1, defying the state Legislature once again.

And with this latest delay, some lawmakers and anti-smoking activists are convinced that Gov. George Pataki will stall the issue until he leaves office at the end of the year.

"My estimate is they're going to simply ignore the law and ride it out until the end of the governor's term," said Russell Sciandra, director of the Center for a Tobacco Free New York. "And everyone I've talked to seems to feel the same way."

This week, state Tax Commissioner Andrew Eristoff told a legislative panel the agency would not collect the taxes on March 1 as required, largely because the administration wants lawmakers to consider its idea to delay implementation by one year. Pataki is stepping down Dec. 31, declining to run for a fourth term.

The administration's postponement frustrated the Legislature's chief anti-smoking advocate.



"It's a bit disingenuous for you to say you can't enforce the law because we're considering changing it," Assemblyman Pete Grannis, D-Manhattan, told Eristoff.

In a later interview, Grannis said, "If their approach is 'we're going to ignore it,' then what can be done to force a commissioner to obey the law? You can try a public relations campaign ... outlining how many teachers this pays for, for example. But that's a means of embarrassment and maybe the administration is beyond embarrassment in their swan-song year."

The long-running tax issue is no small matter: Hundreds of millions of dollars are at stake. On one side are convenience stores that compete with reservation stores and state legislators who view the taxes as a way of helping to pay for the state budget. Joining them are anti-smoking groups that want to see cigarettes made more expensive.

On the other are customers who enjoy cheaper prices and Native American tribes that insist the law would intrude on their sovereignty.

"The Seneca people commend Gov. Pataki for his consistent position recognizing and respecting the unique, sovereign status of the Seneca Nation," Seneca President Barry E. Snyder Jr. said in a statement a day after the administration said it would not collect the taxes on March 1. "At the same time, we continue to be amazed that the New York state Legislature persists with the debate about sales tax collection on Seneca territories when federal laws and treaties are clear."

The Department of Taxation and Finance is recommending against a March 1 start date because the agency is asking lawmakers to give the governor more power to negotiate agreements with Indian nations, without having to seek legislative approval, spokesman Tom Bergin said. The Legislature is also being asked to consider

an Indian export decal system to track sales of cigarettes out of state, he said.

"As a matter of practical administration, we think it would be premature to begin implementing March 1, at the same time the Legislature is reviewing the substantive changes to the law," he said.

A state Senate report figured New York could reap \$1 billion from the tax collections, though others have estimated less than half that. The state's per-pack tax on cigarettes is \$1.50; it charges about 29 cents in taxes per gallon of gasoline. Pataki in January proposed increasing the cigarette tax by an extra dollar a pack.

Courts have ruled that states can impose taxes on sales by Indian-run stores to non-Indians. The state could do so by collecting tax payments from cigarette distributors. Reservation stores would then raise prices, but Native American customers would be eligible for rebates, legislators said.

Tribes think they are being made scapegoats for New York's sales tax losses on cigarettes.

"The majority of the losses are coming from Internet sales, bootlegging and out-of-state sales," said Mark Emery, spokesman for the New York Oneidas, who have a reservation west of Utica. "The reservations are not located near population centers. They are generally located in rural areas. So we don't think the majority of loss is coming from reservations."

When Pataki raised the sales-tax issue in 1997, about 1,000 members of the Seneca Nation burned tires and shut down the state Thruway between Hamburg and Silver Creek south of Buffalo. There was a melee, triggering the arrest of 11 people. The issue faded away.

Pataki may still want to "avoid front-page news with another flareup," Grannis said. The governor is exploring a 2008

presidential run.

The issue was revived in 2003 amid the recession. Faced with a \$12 billion budget gap, legislators threaded together a hodgepodge of tax, fee and tuition hikes, sold off a good portion of the state's share of a national tobacco settlement, borrowed heavily and expanded gambling.

They also banked on collecting \$164 million in taxes from sales at Indian reservations, primarily on cigarettes and gasoline. But collections never began.

Every year since, legislators have called for collecting the tax and Pataki has ignored them. Last year, legislators included it in the budget with the provision that the state begin collecting on March 1.

"The Legislature, we make the laws. The executive branch is supposed to implement and enforce them," said Sen. Raymond Meier, R-Western, Oneida County.

Pataki officials have repeatedly said they want to address the issue through "cooperation, not confrontation." They have tried to negotiate "parity" deals in which tribes would voluntarily raise the prices of gas and cigarettes to match what nearby non-Indian stores charge — without paying taxes to the state. But tentative agreements — sometimes included as part of a way to settle longstanding Indian land-claim lawsuits and open Indian-run casinos — have always fallen through.

The latest delay was all too familiar to convenience store owners.

"We have the governor once again using his delay tactics and dog-ate-my-homework excuses for not enforcing (the) law," said James Calvin, president of the Association of Convenience Stores.

Yet he's not convinced that the issue is dead this year.

"We don't have any doubt that, in one way

or another, the taxes on sales to non-Indians are going to be collected by New York," Calvin said. "The question is: How soon?"

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