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**Assemblyman David Townsend, Convenience Store Operator  
Sue Governor Spitzer to Force Collection of Taxes on  
Indian Sales of Gas, Cigarettes to Non-Indian New Yorkers**

New York State Assemblyman David R. Townsend Jr. joined New York convenience store operators today in announcing legal action to compel the Spitzer administration to uphold the state law that requires collection of state taxes on Native American sales of cigarettes and gasoline to non-Indian New Yorkers.

Plaintiffs in the tax fairness lawsuit are Assemblyman Townsend and Dabiew's Market, a NYACS-member family-run convenience store in Franklin County that loses hundreds of non-Indian customers every day to neighboring Mohawk Indian stores due to the artificial price advantages they enjoy by not charging state taxes. Defendants are Governor Spitzer and newly confirmed Tax Commissioner Robert Megna.

Being filed this week in State Supreme Court in Albany County, the Article 78 proceeding seeks an order directing the Department of Taxation and Finance to immediately enforce Sections 471-e and 482-e of the Tax Law, which direct the Department to pre-collect these taxes from wholesale distributors that deliver to the tribes. The mandate took effect March 1, 2006, but then-Governor Pataki and now Governor Spitzer have refused to enforce it.

The legal action is supported by the New York Association of Convenience Stores, which has waged a 20-year-long battle to get New York State to exercise its right under the U.S. Supreme Court's landmark 1994 *Attea* ruling to collect taxes on Indian sales to non-Indians. NYACS estimates that Governor Spitzer's inaction is costing licensed non-Indian retail businesses over \$1 billion annually in lost sales and costing taxpayers at least \$500 million annually in lost revenue to the state (about \$1.2 million per day).

"Tax collection is mandatory in order to insure that a level playing field exists for all businesses, Indian and non-Indian alike," Assemblyman Townsend explained. "The Governor and the State Tax Commissioner are leaving me with no choice but to commence a lawsuit against them for their failure to comply with State laws to protect our law-abiding citizens. The taxpayers shouldn't have to pay to go to court in order to force our elected officials to follow our laws, especially when they have taken an oath of office to do just that."

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"Last May," said Assemblyman Townsend, "I stood in front of Arnott's Gas and Convenience store in Verona and demanded that Governor Spitzer start immediate collection of sales and excise taxes from the Oneidas and all the other Indian tribes across the state, so that good taxpaying citizens like the Arnotts can remain open and competitive. I have been demanding that the law be enforced for the past several years."

"Not only did the Governor not respond, he refused to collect the taxes owed. Now, sadly, Arnott's was forced to close and now has joined the ranks of countless other long-time taxpaying family businesses both here in Oneida County and across the State who are no longer with us," Assemblyman Townsend observed.

Co-plaintiff Don Dabiew, who owns Dabiew's Market in Bombay NY with his wife Ann, stated: "It's tough enough for any small business to survive in the upstate economy. But it's almost impossible when the state chases away half your customers to a competitor that isn't required to play by the same rules."

Also participating in today's press conference in Albany announcing the lawsuit was Dan Kirst, President of E.P. Kirst & Sons Inc., Hamburg NY. Ravaged by runaway cigarette tax evasion ignored by the Pataki and Spitzer administrations, this century-old wholesale supplier to convenience stores was recently forced to close.

"You are looking at a casualty of New York State's failure to enforce the tax law," said Kirst. "Governor Spitzer said in his budget message that he wants to 'transform the upstate economy through strategic investments that create high-quality jobs.' But he won't even create a level playing field for a family business in Western New York that has provided employment, invested in the community, paid its taxes, and collected taxes for the state for 100 years."

"Governor Spitzer repeatedly promised he'd start collecting these taxes," said James Calvin, President of the New York Association of Convenience Stores. "Yet here we are, more than a year after 'Day One,' and the only thing that has changed is the rising number of hard-working families that are losing their livelihoods."