

The Tax Collection Issue: Facts Vs. Myths

Myth: Native American “sovereignty” means the state has no power to tax cigarettes that are sold through tribal sellers to non-tribal members.

Fact: The U.S. Supreme Court has held on no fewer than five occasions that the State has the power to tax cigarettes sold to non-tribal members. Just as New York can tax cigarettes shipped into New York from New Jersey or Canada, the State can do the same with cigarettes sold into New York commerce from the reservations.

Myth: Federal law and federal court cases are not binding on Native American tribes.

Fact: Native American tribes are not sovereign relative to the federal government. Native Americans are U.S. citizens, receive all of the benefits of U.S. citizenship, are required to pay federal taxes like all U.S. citizens, and are bound by the rulings of the federal courts – and that includes U.S. Supreme Court decisions that affirm New York’s power to tax goods sold to New Yorkers.

Myth: New York will have to “invade” reservation lands to enforce the tax laws.

Fact: The law very carefully avoids tax collection on reservation lands. Instead it requires non-tribal wholesalers located off reservation lands to pay the excise taxes on all cigarettes they sell, whether they are selling to a reservation retailer or to a non-tribal retailer. The law also provides the tribes with several methods of obtaining tax-free cigarettes for their own use. Systems similar to this one are in effect in numerous other states, and have been repeatedly upheld by the courts.

Myth: Treaties with New York’s Indian tribes trump the State’s power to collect taxes on cigarettes sold through the tribes.

Fact: No treaty entitles any tribe to sell cigarettes to non-tribal members tax-free. State courts have ruled that these treaties prohibit the State from taxing Indian *land*, not their commerce with non-Indian customers.

Myth: Preserving tax-free sales to non-tribal members will help preserve jobs in Western New York.

Fact: A business model that is rooted in tax-evasion, takes away more jobs than it creates, undermines the State budget, and hurts more retailers than it helps is not a sustainable solution to the economy of Western New York – or any other part of the State. Many of the tobacco retailing jobs the Seneca Indian Nation boasts of shifted from the tax-collecting side of the street as tax evasion grew, and will shift back once taxes are applied fairly.