



New York Association of Convenience Stores
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MEMORANDUM OF CONDITIONAL SUPPORT

A.11258a by Assemblyman Magee

S.8146b by Senator Nozzolio

AN ACT to amend the tax law, in relation to the sale of cigarettes

The New York Association of Convenience Stores represents 7,700 neighborhood mini marts and convenience stores, most of which are registered with the State of New York as authorized, tax-collecting retailers of tobacco products and/or motor fuel.

For 20 years, our industry has been decimated by the ill effects of unfair tribal competition shamefully fostered, fueled and protected by the State of New York.

Since our letter addressed to Terryl Brown Clemons, Acting Counsel to the Governor, dated August 28, 2008, concerning this legislation, NYACS has modified its position in light of evolving circumstances.

While our serious doubts about the effectiveness of the bill persist, we now conditionally support enactment of A.11258a/S.8146b, respectfully urging Governor Paterson, in signing it, to also take the following steps:

- A.) So as to close potential loopholes, urge the Legislature to pass follow-up bill A.11834, which was subsequently introduced by Assemblyman Magee, as a chapter amendment. A.11834 would require outright the pre-payment of excise taxes by the wholesale distributor, and provide a sensible mechanism for Native Americans who buy cigarettes from tribal stores to obtain a refund of the value of the excise tax, in order to preserve the exemption on Indian sales to members of the same tribe; and
- B.) So as to ensure timely implementation, direct the Department of Taxation and Finance to issue within 30 days the certification form prescribed by the bill. This form is to be completed by wholesale distributors of tobacco attesting that they do not and will not violate the Tax Law, and be submitted within 60 days of enactment of A.11258a/S.8146b to the cigarette manufacturers that supply them, as well as to the Department; and
- C.) So as to avoid confusion and minimize exposure to legal liability, direct the Department of Taxation and Finance to instruct wholesale distributors to first submit the completed certification form to the Department for review and approval *before* it is forwarded to cigarette manufacturers.

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Passage of A.11258a/S.8146b symbolically expressed the Legislature's resolve to address a cigarette tax evasion epidemic that has crippled small businesses, robbed taxpayers, and thwarted anti-smoking efforts.

But in conditionally urging its enactment, we are obliged to point out that there is a better solution. It is a mechanism the Tax Department has had at its disposal for the past 2½ years, yet has refused to activate – the law requiring the Department to collect taxes on cigarettes and motor fuel purchased by non-Indian customers from Indian tribal outlets pursuant to the U.S. Supreme Court's *Attea* decision.

In the 33 months since this statute took effect, this malfeasance has cost the State at least \$2 billion in desperately needed revenue, while tax-collecting retailers of tobacco and motor fuel have needlessly lost several billion dollars in gross sales to State-sanctioned tax-free tribal competition, forcing many family-run independent stores out of business.

In order to recapture this revenue to help alleviate the State's fiscal dilemma, restore a level playing field for law-abiding small businesses, maximize the effectiveness of anti-smoking initiatives, and curb the culture of lawlessness emanating from the indefensible policy of non-enforcement, Governor Paterson must act immediately. Signing A.11258a/S.8146b into law with the aforementioned conditions would be a step forward.

James S. Calvin
President, NYACS
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