

Assemblyman Townsend's Tax Fairness Lawsuit Reaches Dead End



Assemblyman Townsend

The New York State Court of Appeals this week denied permission for Assemblyman David Townsend to appeal lower-court rulings that he lacked "standing" to sue the Governor and Tax Department to compel them to enforce the existing state law requiring collection of taxes on Indian sales to non-Indians.

That effectively concludes a lawsuit, entirely funded by NYACS, which was originally filed in 2008. The only recourse for continuing would be to ask the U.S. Supreme Court to hear it, but the cost would be very high and the likelihood of success very slim.

NYACS thanks Assemblyman Townsend for his principled and consistency advocacy for equal enforcement of the tax law. In 2009, NYACS presented him with a "Tax Fairness Tiger" award. After 20 years in the state Legislature, Mr. Townsend is retiring from the Assembly this year and running for Oneida County Sheriff in the November election.

NYACS also thanks attorney Douglas Kantor of the Washington DC law firm of Steptoe & Johnson LLP for spearheading the case from its inception.

Chronology of the Case

January 2008 - Assemblyman Townsend and Dabiew's Market file Article 78 action in State Supreme Court against then-Governor Spitzer and state Tax Department.

July 2008 - State Supreme Court Justice Robert Sackett dismisses case on grounds that Townsend and Dabiew lack standing to bring such an action. Rejecting Townsend's claim that Executive Branch refusal to implement tax collection law nullified his vote in favor of it, Judge Sackett maintains: "The Governor did not unconstitutionally interfere with Assemblyman Townsend's ability to legislate."

May 2009 - Assemblyman Townsend and Dabiew's Market file appeal of Judge Sackett's "standing" ruling with state Appellate Division of State Supreme Court.

January 2010 - Appellate Division denies appeal, upholding Judge Sackett's decision.

April 2010 - Appellate Division of State Supreme Court refuses to grant permission to Assemblyman Townsend to appeal the "standing" ruling to the Court of Appeals, the state's highest court.

June 2010 - Court Appeals denies Assemblyman Townsend permission to appeal the "standing" issue to the Court of Appeals.