



New York Association of Convenience Stores
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Dear Erie County Legislator:

The New York Association of Convenience Stores represents 390 neighborhood mini-marts in Erie County, and 7,500 statewide, that are licensed by the State of New York to responsibly sell legal tobacco products to adult customers while collecting and remitting applicable taxes on those sales.

On behalf of law-abiding Erie County business owners who have long suffered the ill effects of uncontrolled cigarette and motor fuel tax avoidance – and Erie County taxpayers who have long been deprived of tens of millions of dollars annually in sales tax revenue resulting from this activity – we respectfully urge you not to support the resolution proposed by Legislator Timothy Kennedy opposing the State’s plans collect taxes on cigarettes sold by Native American tribes to non-Indian customers.

Contrary to Mr. Kennedy’s assertions, the U.S. Supreme Court has made clear that the State is entitled to collect such taxes, and that it would not unreasonably infringe on Indian sovereignty (see Department of Taxation and Finance of New York, et al, Petitioners, v. Milhelm Attea & Bros. Inc., etc., et al, No. 93-377, June 13, 1994, www.nyacs.org/Attearuling.pdf)

Contrary to Mr. Kennedy’s assertions, existing treaties preclude the State from taxing Indian land but *not* Indian commerce with non-Indians (see “Executive Refusal: Why the State Has Failed to Collect Cigarette Taxes on Native American Reservations,” New York State Senate Committee on Investigations and Government Operations, June 2010, Pages 5-6, www.nysenate.gov/files/pdfs/Executive%20Refusal%20FINAL%20June%202010.pdf)

Contrary to Mr. Kennedy’s assertions, being an economic powerhouse should not excuse any entity from abiding by duly enacted standards for engaging in commerce with New Yorkers.

The taxes would be pre-collected from the non-Indian wholesale cigarette distributor, before delivery to the tribal enterprise – just as they currently are with every other store in New York State. Procedures would be in place to protect the outright tax exemption on tribal sales to tribal members. No Indian would pay one dime of state taxes. No state tax inspector would need to set foot on reservation land.

Although it’s patently unfair, Seneca Indian smoke shops would remain exempt from the ban on self-serve tobacco displays, cigarette minimum pricing laws, health department undercover inspections to detect and punish underage tobacco sales, and retail dealer registration that our stores are required to comply with under penalty of law.

We hope that your careful examination of the facts surrounding this issue will lead you to conclude that Legislator Kennedy's proposed resolution is not in the best interests of Erie County. Thank you for keeping the views of the convenience store community in mind.