



New York Association of Convenience Stores  
130 Washington Avenue, Suite 300, Albany NY 12210

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TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

## MEMORANDUM IN SUPPORT

### **S.8316 by Senator Klein / A.11535 by Rules (Assemblyman Magee)**

AN ACT to amend the tax law, in relation to tax agreements with Indian tribes or nations

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

Two days ago, the Legislature narrowly approved an emergency appropriation bill (S.8285/A.11515) that, in part, grants this Governor and future Governors the authority to negotiate, sign and codify court settlements between the State and Indian tribes regarding taxation issues WITHOUT the legislative ratification heretofore required.

In its haste to avoid a “shutdown of state government,” the Legislature abdicated one of its constitutional powers to an unelected Governor without fully understanding the far-reaching and irreparable ramifications for businesses and communities statewide.

Governor Paterson has been pursuing negotiations with Indian tribes on the tax collection issue for the past two years, knowing that existing Tax Law would require him to present any settlement to the Legislature for its review and approval. Yet he waited until the final week of this legislative session to ask you to give him *carte blanche* to cut deals that could permanently and dramatically alter New York’s political, social, and economic landscape. Many legislators rightfully resent his doing so by inserting the provision into a pass-it-or-else budget extender at the 11<sup>th</sup> hour.

A purported draft of possible terms for one such deal between the Paterson administration and the Oneida Indian Nation illustrates the inherent dangers of the Executive Branch’s newfound omnipotence. If enacted, it would require the Oneidas’ convenience stores to elevate their retail prices on national brand cigarettes to those of surrounding non-Indian competitors, yet allow them to forever sell their rapidly growing reservation-made cigarette brands tax-free. And there is no mention of motor fuel, of which the Sav-Ons sell millions of gallons tax-free annually. While it is not known whether the Paterson administration has agreed to any of these terms, they would reflect capitulation rather than negotiation – and any Oneida agreement would serve as the model for settlements with other tribes.

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Governor Paterson is to be commended for his initiative in pursuing negotiations with Indian tribes to address the long-standing plague of cigarette tax evasion, which costs New York State upwards of \$1 billion a year in lost revenue and costs licensed, tax-collecting retailers untold billions in lost sales.

But if the State is to contemplate negotiating away the ability of law-abiding small businesses to fairly compete for retail trade, the ability of county governments to collect legitimate sales tax revenue needed in order to control property taxes, and/or the ability of state government to fulfill its fiscal and public health responsibilities, then the people of New York need to have a say in the process – through their elected Senate and Assembly representatives.

This chapter amendment restores the rightful power of the Legislature to ratify any proposed tax agreement with an Indian tribe, in order to prevent the Executive Branch from giving away the farm. With appreciation for Senator Klein's and Assemblyman Magee's outstanding leadership on the issue of tax fairness, we respectfully recommend its swift passage.

**James S. Calvin**  
**President, NYACS**  
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