



Legislation Text

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Res. No. 137

Resolution calling upon the Governor to discontinue the State of New York's delay of the collection of the sales and excise tax on the sale of cigarettes made to non-Native Americans on Native American reservations.

By Council Members Fidler, Gennaro, Brewer, Koppell and Weprin

Whereas, Pursuant to Articles 20 and 28 of the Tax Law, the State of New York imposes both a cigarette excise tax equal to \$1.50 per pack of cigarettes and a 4% sales tax on the sale of cigarettes; and

Whereas, The issue of whether states have the authority to require the collection of such taxes on cigarette purchases made by non-Native Americans on Native American reservations has been the subject of numerous court cases including the 1994 Supreme Court decision, *Department of Taxation and Finance of New York et al v. Milhelm Attea & Bros., Inc, et al.*, which unanimously held that non-Native Americans purchasing cigarettes on New York reservations are subject to tax; and

Whereas, In spite of the legal requirement to collect taxes from non-Native American consumers, many New York Indian tribes have refused to comply, citing that they are exempt from charging the taxes because of their sovereign status; and

Whereas, The sale of these so-called tax-free cigarettes has proved to be an extremely lucrative business for those Native Americans engaging in the sale of cigarettes, in that a carton of cigarettes bought on-line or in person from a reservation can cost less than \$25 a carton compared to the \$65 charge in New York City; and

Whereas, According to a recent *Business Review* article, the State is currently losing \$450 million a year by not mandating the collection of these taxes on such sales; and

Whereas, As part of the adopted 2005-2006 State Budget, the State directed the Department of Taxation and Finance to enforce the collection of these taxes, beginning in March 2006; and

Whereas, In January 2006, as part of the 2006-2007 Executive Budget (Assembly Bill 9560/Senate Bill 6460), Governor Pataki proposed to increase the current cigarette excise from \$1.50 to \$2.50 per pack while at the same time proposed delaying enforcement of the collection of taxes on the cigarette sales made on reservations until March 2007; and

Whereas, Despite statutory authority and case law setting forth a legal obligation to pay, Governor Pataki, who supported the collection of the excise in 1997, now prefers to gain tax compliance by proposing to negotiate separate tax arrangements with Native American tribes; and

Whereas, Some Native American tribes, the Seneca tribe in particular, have made it abundantly clear that they will never agree to any such negotiation and have gone so far to saying they will never collect a cigarette excise tax on cigarettes sold on their reservation regardless of any legal obligation; and

Whereas, While at the same time Governor Pataki is proposing an increase in the cigarette tax excise from \$1.50 to \$2.50- consequently increasing the potential for profitability in cigarette tax evasion-- he is delaying the enforcement of a current law that requires taxpayers to pay the cigarette excise on sales they are already obligated to pay; now therefore, be it

Resolved, That the Council of the City of New York calls upon the Governor to discontinue the State of New York's delay of the collection of the sales and excise tax on the sale of cigarettes made to non-Native Americans on Native American reservations.

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