



NEW YORK STATE SENATOR

Craig M. Johnson

Senator Johnson Releases Committee Report on Non-Collection of Cigarette Taxes Sold on Native American Reservations

CRAIG M. JOHNSON June 10, 2010

| ISSUE: **INVESTIGATIONS, GOVERNMENT OPERATIONS, TAXES, SALES TAX**

| COMMITTEE: **INVESTIGATIONS AND GOVERNMENT OPERATIONS**



The Senate Standing Committee on Investigations & Government Operations today released a report detailing New York's failure to collect taxes from sales of cigarettes on Native American Reservations to non-Natives, Committee Chairman Senator Craig M. Johnson, (D-Nassau) announced.

The report, entitled “Executive Refusal” found that New York is correct in its position that it is entitled to collect taxes on these sales. However, it concluded that the main cause of the current stalemate is the Executive Branch's long-standing failure to engage in aggressive negotiations with New York's Native American nations.

“This is a decade-plus bi-partisan failure that has literally let billions of tax dollars go uncollected,” said the Committee's Chairman, Senator Craig M. Johnson, (D-Nassau.) “While we respect the sovereignty and history of New York’s Native American Nations, the current state of affairs is simply unsustainable.”

The committee also found testimony provided by Nation members that detailed past injustices and what they believe to be an historical lack of respect and consideration paid to them by the state, was with merit.

The report made a series of recommendations: First among them is that Governor Paterson make good on his promise to rescind the administration's policy of “forbearance,” which has fostered a multi-billion dollar market for tax free cigarettes and has hurt licensed tax-paying retailers.

“The twin cancers of appeasement and benign neglect must be eradicated from the State’s governmental playbook,” the report stated. “If New York cannot quickly and effectively recapture a spirit of fair play and provide a level economic playing field, it will have suffered a devastating blow which every regulated licensee will know: New York enforces the law selectively, and only against those it can intimidate and overpower.”

In the 1990s, Governor Pataki instituted the forbearance policy, which barred the state Department of Taxation and Finance from pursuing the collection of these taxes after a series of violent confrontations on Seneca Nation land.

Pataki and his successors upheld this policy, though revenue from these collections were routinely and cynically inserted into Executive budget proposals.

This policy also went unchanged while other issues with Native American nations – such as a \$40 million dispute over the cost of state police security at Native American-owned casinos – arose, and members of one Nation, the Mastic-based Poospatucks, were implicated in unlawful smuggling and counterfeiting operations.

The report’s full recommendations include:

- Lifting the forbearance policy and issuing tax exempt coupons to Native American retailers;
- The State should promptly proceed to resolve the \$40 million unpaid charge for casino security and personal background checks performed on behalf of the Seneca casino operations in western New York State by implementing the arbitration clause contained in each applicable compact.

- The Legislature should immediately create a “Native American Affairs Committee” in each house of the Legislature to address both short and long term legal and social issues between the State and the Bureau of Indian Affairs (BIA) recognized Native American tribes.
- The Governor should appoint a “Deputy Secretary for Native American Affairs” to address all issues affecting these nations, including, but not limited to, arbitration issues involving the collection of cigarette and petroleum taxes, the collection of revenues under the casino compacts and to resolve contested land claims.
- The State, which has been involved in negotiations with the Native American tribes seeking to arrive at a “fair and equitable” settlement in connection with unpaid tax arrearages, should enhance the frequency and duration of these discussions
- The State should revoke its recognition of the Poospatuck Tribe.

The report was the result of an eight-month inquiry by the committee that included two public hearings, followup interviews and hundreds of pages of submitted testimony. A copy of the report, hearing transcripts and other materials can be found at www.cjohnson.nysenate.gov.