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Seneca County sues to force collection of sales taxes

By Amaris Elliott-Engel / The Citizen

Seneca County filed a lawsuit Monday against the state Department of Taxation and Finance, the Cayuga Indian Nation of New York and several cigarette wholesalers seeking to force them to collect taxes on sales of tobacco products and gasoline at Indian enterprises.

Seneca County Attorney Steven Getman filed the lawsuit in state Supreme Court in Albany at Fayette Supervisor Ed Barto's request.

In a news release, Barto cited the closure of area gas stations following the Cayuga Nation's opening of its gas station on Route 89 in Seneca Falls as an example of a competitive disadvantage to non-Indian retailers who must pay taxes and charge more for the same products.

Most recently, JNT's on Bayard Street in Seneca Falls closed because of unfair competition, Barto said. The tribe also has a gas station on Route 90 in Union Springs.

Earlier this month, convenience store operators sued Gov. George Pataki to compel him to enforce a new law requiring tax collection on tobacco products and gasoline sold to Indian businesses.

The law, introduced by State Sen. Michael Nozzolio, R-Fayette, required the tax department to start sales and excise tax collection March 1.

State tax commissioner Andrew Eristoff said earlier this year that he won't enforce the law on reservation and Internet sales to non-Indians to give Pataki more time to settle the long-standing land claims of New York tribes.

The Cayuga Nation's land claim litigation died Monday after the U.S. Supreme Court declined to hear an appeal of its dismissal. The tribe has a pending application for 125 acres to be taken into sovereign trust status by the federal government.

The wholesale distributors named in the lawsuit are known or believed to be supplying New York tribes with untaxed cigarettes: Day Wholesale Inc., of Tupper Lake; Milhelm Attea and Bros., of Buffalo; Gutlove and Shirvint, of Long Island City; Mauro Pennisi, of Lindenhurst; and Frank Colucci Inc., of Niagara Falls.

Tribes have long said the kind of tax enforcement Seneca County and the convenience store operators are pursuing violate their status as sovereign nations.

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