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DEPARTMENT OF FINANCE

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FINANCE COMMISSIONER MARTHA E. STARK AND CORPORATION COUNSEL MICHAEL A. CARDOZO ANNOUNCE THE CITY'S LATEST EFFORT TO COLLECT UNPAID TAX ON INTERNET PURCHASES OF CIGARETTES

Major Settlement with Kentucky-Based Internet Cigarette Seller May Result in Recovery of up to \$6.95 Million in Evaded City Tax from More than 16,000 Purchasers; Fifth Major Settlement since 2003 with Internet Cigarette Merchants Reaffirms City's Commitment to Level Playing Field for Retailers

Finance Commissioner Martha E. Stark and Corporation Counsel Michael A. Cardozo today announced that as a result of a settlement with the Internet cigarette seller dirtcheapcigs.com, Finance will mail bills to more than 16,000 people who owe a total of \$6.95 million in unpaid cigarette tax to the City. Finance will mail letters to individuals allowing them to pay or contest the tax due within 30 days. Finance will not bill penalties, which can be assessed at up to \$200 per carton of untaxed cigarettes if the amount due is paid within 30 days.

The settlement with dirtcheapcigs.com, a Kentucky-based Internet seller no longer in business, is the largest to date resulting from a 2003 lawsuit filed by the City in Federal District Court in Manhattan. The lawsuit was filed against corporations and individuals who evade cigarette excise taxes through the operation of Internet sites that ship cigarettes to New York City residents.

"We have an obligation to collect all taxes owed to the City and create a level playing field for local retailers who properly collect the cigarette tax," Finance Commissioner Stark said.

"Dirtcheapcigs.com cheated the City out of revenue needed to support vital services, undermined the City's efforts to reduce smoking, and lied to its customers by telling them that no cigarette tax was due. I urge anyone who has failed to pay tax on cigarettes purchased online to visit nyc.gov/finance or call 3-1-1 to pay the required tax."

"The City Law Department intends to keep up the pressure to assure that applicable cigarette taxes are paid, as evidenced by the recent suit brought by the City against State-licensed cigarette wholesalers who are not paying the tax," said Corporation Counsel Michael Cardozo. "It is not fair to the overwhelming number of companies and individuals who pay their cigarette taxes for a small minority to evade lawfully imposed taxes, as these internet sellers, and their customers, did here."

Beginning in January 2003, the City filed a series of complaints against individuals and companies that sell cigarettes over the Internet to New York City residents in violation of numerous State and Federal laws. The suits allege that the defendants refused to file federal Jenkins Act reports, which are intended to alert state tax authorities to out-of-state cigarette purchases so that the purchases can be subject to local taxes. Judge Deborah A. Batts of the Federal District Court for the Southern District of New York previously found that Internet cigarette sellers who failed to file Jenkins Act reports violated Federal mail and wire fraud statutes.

The sales information obtained by the City through this settlement includes the names, dates and quantities of cigarettes purchased by New York State residents from 2000 to mid-2003, as well as

credit card and shipping information. Prior collection efforts - using lists of Internet buyers turned over by web-sellers sued by the City - have resulted in voluntary payments by City residents of nearly 60% of cigarette taxes owed, with more coming in as compliers continue to make payments on installment plans.

Often, City residents seeking to purchase cigarettes online are misled by flagrant misrepresentations by Internet sellers claiming that their sales are "tax-free" or that sellers were not required by law to furnish sales tax information to tax authorities. Under the Federal Jenkins Act and State law, all Internet cigarette sellers, including Native American sellers, are required to provide information about sales to taxing jurisdictions.

"There's no such thing as a tax-free cigarette," Commissioner Stark said.

Internet cigarette sellers are prohibited from "shipping or causing to be shipped any cigarettes to any person in this state," under New York Public Health Law §1399-II. The constitutionality of the statute was upheld by the United States Court of Appeals for the Second Circuit in *Brown & Williamson Tobacco Corp. v Pataki*, 320 F.3d 200 (2d Cir. 2003) and the law went into effect on or about March 27, 2003.

The Law Department previously reached settlements with *affordablecigs.com*, where 2,313 customers were billed for \$956,340, *cigoutlet.com*, where 136 customers were billed \$120,845, and *smokesforless.com*, where 1,221 customers were billed \$277,695. So far nearly 60% of revenue has been collected from those three settlements. The Department of Finance is currently in the process of billing 12,012 customers of *esmokes.com* for \$4,484,010.

Assistant Commissioner Carlton Butler and Director of Enforcement Maureen Kokeas are leading the collection process at the Department of Finance. Eric Proshansky of the New York City Law Department handled the settlement.

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