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**MAYOR MICHAEL R. BLOOMBERG'S CAMPAIGN AGAINST CIGARETTE TAX
EVASION GETS MAJOR BOOST AS APPEALS COURT REINSTATES FOUR CITY
SUITS AGAINST INTERNET CIGARETTE SELLERS FOR VIOLATING FEDERAL
RACKETEERING STATUTES AND STATE LAW**

*City's Suits Seek Damages Against Internet Cigarettes Sellers' Concealment of Sales and
Misrepresentations of Tax Status of Internet Cigarette Purchases*

In the latest development in Mayor Michael R. Bloomberg's campaign against cigarette tax evasion, the U.S. Court of Appeals for the Second Circuit has reversed several March 2006 lower court orders and reinstated the City's lawsuits against numerous corporations and individuals who own or operate Internet websites selling cigarettes. The decision is the latest step forward in Mayor Bloomberg's efforts to reduce smoking in New York City, which have led to a 21 percent drop in adult smoking and a 52 percent drop in smoking among public high school students in the last five years.

"We will continue moving forward vigorously against those who break the law and deprive the City of vitally needed tax dollars – especially when such lawbreakers also undercut public health," said Mayor Bloomberg. "I once again urge Albany to take decisive action to crack down on cigarette bootlegging, beginning with collecting the state sales tax on cigarettes sold on Indian reservations."

In today's 56 page ruling, the Court of Appeals, in a two to one opinion by Judge Chester Straub, recognized that the City's complaints stated a proper federal claim for violation of the federal RICO (Racketeer Influenced Corrupt Organization) statutes based upon mail and wire fraud. The Court also separately recognized that the complaints may present valid causes of action charging violations of New York State law outlawing deceptive consumer transactions and public nuisance, referring those questions to the New York State Court of Appeals.

"We are gratified that the Court has agreed with the City that these suits, which take aim at those who are illegally selling cigarettes without paying the appropriate taxes, may go forward," said Corporation Counsel Michael A. Cardozo. "The illegal activities of the defendants, some of whom have already settled with the City, are causing New York City to lose millions of dollars in tax revenue. This decision sends a powerful message to all sellers of cigarettes on the internet: don't falsely advertise and report your cigarette sales – because if you do, you'll be paying New York City triple the amount of taxes that your sales would have generated."

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Finance Commissioner Martha E. Stark said, “We’re glad the Second Circuit agrees that the City should have its day in court to prove that there is no such thing as tax-free cigarettes, and that businesses that lie to their customers, hurt small businesses that play by the rules, and undermine efforts to reduce smoking should be held accountable.”

Filed in 2003 in the Federal District Court in Manhattan, the City’s suits allege that the defendants withhold the federally mandated Jenkins Act reports that alert state tax authorities to out-of-state cigarette purchases, so that the purchases can be taxed. The complaints also allege that Internet sellers assure customers that purchases will be concealed from state tax authorities. According to the complaints, some defendants also routinely and falsely state that cigarettes sold to New Yorkers over the Internet are “tax free,” despite New York City and State laws requiring purchasers to pay cigarette excise and sales taxes on cigarettes purchased for use in the state.

The City’s suits seek triple the amount of the taxes the City has lost by reason of the defendants’ unreported sales to New York City residents – which could amount to more than \$15 million in recovery for the City from these defendants alone. “The City’s alleged injury of lost tax revenue is directly caused by [the] defendants’ alleged schemes,” the Court wrote in its decision.

In an effort to preserve this important source of revenue, the City has also brought further suits, whose legal validity has recently been sustained by a lower Federal court in Brooklyn, seeking to halt shipments of untaxed cigarettes by cigarette wholesalers that violate the Contraband Cigarette Trafficking Act (CCTA) of 1978, 18 U.S.C. § 2341 et seq., which was recently amended to permit state and local jurisdictions to bring actions under the CCTA, a role formerly reserved to federal prosecutors.

Elizabeth S. Natrella, Senior Counsel, Appeals Division, was the lead attorney who argued the case on appeal, with assistance from Eric Proshansky, Deputy Chief of the Law Department’s Affirmative Litigation Division and the lead trial attorney who initiated the lawsuits and has been pursuing various other suits on the City’s behalf to enforce the City’s cigarette laws. Leonard Koerner, Chief of the Appeals Division, and Gail Rubin, Chief of the Affirmative Litigation Division, were also actively involved in these cases.

Well-established Federal case law provides that the failure to file Jenkins Act reports amounts to a violation of the Federal racketeering statutes, entitling the City to recover treble or three times its actual losses in addition to attorney’s fees. The City and State of New York each impose an excise tax on all cigarettes possessed for sale or use within the State and City of New York. Cigarette taxes of other states are generally lower than New York’s, allowing out-of-state retailers to offer cigarettes at lower prices than prevail at the City’s “brick-and-mortar” stores.

According to Ms. Natrella, “The underlying assumption of the Internet cigarette business is that the purchasers will evade the tax imposed by their home states, because if the purchasers pay the tax, the price difference available from an Internet purchase essentially disappears.”

Deputy Chief Proshansky added, “Because the success of the defendants’ businesses relies almost entirely on customer tax evasion, Internet cigarette sellers do everything they can to promote and assist that tax evasion.”

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