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**MAYOR BLOOMBERG, FINANCE COMMISSIONER STARK AND
CORPORATION COUNSEL CARDOZO ANNOUNCE LARGEST SETTLEMENT
IN ONGOING EFFORT TO COLLECT CITY SALES TAXES OWED ON
INTERNET CIGARETTE PURCHASES**

*Latest Settlement with Virginia-Based Internet Cigarette Seller May Result in
Recovery of up to \$33 Million in Evaded City and State Taxes;
Since 2003, Nearly \$1 Million Has Been Collected from Internet Buyers*

Mayor Michael R. Bloomberg, Finance Commissioner Martha E. Stark and Corporation Counsel Michael A. Cardozo today announced that the City has obtained detailed information on Internet cigarettes sales that will facilitate the recovery of up to \$33 million in unpaid sales tax revenue. The settlement – against eSmokes, Inc., a Virginia-based Internet seller now in bankruptcy – is the largest settlement 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 sales taxes through the operation of Internet sites that ship cigarettes to New York City residents.

“Internet cigarette merchants who misrepresent themselves and evade the law cheat local businesses and New Yorkers,” said Mayor Bloomberg. “They mislead the public; they break the law; and they will be held accountable. When you buy cigarettes over the Internet, you have to pay New York City and New York State taxes, regardless of what any web-seller advertises. We have an obligation to level the playing field for retailers who play by the rules and collect taxes that support vital services for all New Yorkers.”

“The City is stepping up enforcement of the cigarette tax laws,” said Commissioner Stark. “Internet sites often make bogus claims about their tax-free status, but they’re breaking the law in doing so. Anyone who has bought cigarettes online and has not been billed for taxes should call 3-1-1.”

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.

(more)

“This most recent settlement shows the success of the City's litigation strategy to drive illegal Internet sellers out of business and to put a stop to the tax evasion that these types of sales promote,” said Corporation Counsel Cardozo. “Internet sellers are really defrauding the public twice - once by defrauding the City of taxes and a second time by their false promises to customers of tax free sales.”

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. Prior collection efforts – using lists of Internet buyers turned over by web-sellers sued by the City – through the Department of Finance have resulted in voluntary payments by City residents of approximately 65% of sales 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 Federal and State law, all Internet cigarette sellers are required to collect taxes.

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.

Eric Proshansky of the New York City Law Department handled the settlement, along with Director of Tax Enforcement Maureen Kokeas of the Finance Department.

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Contact:	Stu Loeser/Virginia Lam	(212) 788-2958
	Owen Stone (Finance)	(212) 232-1773
	Kate O'Brien Ahlers (Law)	(212) 788-0400