



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**NEW YORK CITY FILES SUIT AGAINST TOBACCO WHOLESALERS
FOR FAILURE TO COLLECT CIGARETTE TAXES**

***CITY SUIT AIMS TO HALT SALES OF UNTAXED CIGARETTES TO INDIAN RESERVATION RETAILERS AS
VIOLATIONS OF FEDERAL AND STATE LAW***

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New York, July 24, 2006 – Corporation Counsel Michael A. Cardozo announced today that New York City has filed a lawsuit in the U.S. District Court for the Eastern District of New York against seven wholesale tobacco distributors for failing to collect taxes owed on millions of cartons of cigarettes sold to retailers located on Native American reservations throughout New York State.

The distributors failed to include cigarette taxes, as required by State law, in the wholesale cigarette price. This in turn permitted retailers to sell the cigarettes profitably to consumers without collecting the tax. Such sales occur at retail stores, on the street and by illegal, remote methods, such as over the Internet. Studies indicate that New York State and its localities lose more than \$500 million annually in taxes from the sale of untaxed cigarettes.

Since March 2006, State law has required tobacco wholesalers to pay cigarette taxes and apply tax stamps to all cigarettes sold within New York State. According to records filed with the State Department of Taxation and Finance, the defendant cigarette wholesalers have continued to sell enormous quantities of cigarettes without paying the tax owed and applying the tax stamps required as evidence of payment under the law. Under the recently amended federal Contraband Cigarette Trafficking Act, the City of New York has the authority to obtain injunctive relief, damages and penalties against entities that sell, ship or distribute cigarettes not bearing the required State and City tax stamps. Similarly, the state Cigarette Marketing Standards Act bars the sale of cigarettes at prices that do not include amounts attributable to the payment of taxes on the cigarettes, and permits the City to seek injunctive and monetary relief.

Corporation Counsel Michael A. Cardozo said, "Although smoking is never encouraged, since it is legal, the City must ensure that all laws are followed appropriately. These wholesalers' practices hurt all New Yorkers by shortchanging both the City and the State of tax dollars received from these sales that fund vital governmental programs. By making cheap cigarettes available, the wholesalers' practices also cut into the efforts by all levels of government and the private sector that are aimed at reducing smoking by children and teenagers."

The present suit is the latest front in a comprehensive effort by the City to eliminate illegal cigarette sales. Through a series of innovative lawsuits brought under the federal Racketeer Influenced Corrupt Organizations statute, the City forced the closure of numerous businesses engaged in illegal Internet cigarette sales and obtained information that will permit the recovery of several million dollars in evaded cigarette taxes.

The defendants, all of which are licensed cigarette stamping agents and wholesalers, are:

- **Milhem Attea & Bros., Inc.**, 1506 Clinton Street, Buffalo, N.Y.
- **Day Wholesale, Inc.**, 151 Park Street, Tupper Lake, N.Y.
- **Gutlove & Shirvint, Inc.**, 39-26 23rd Street, Long Island City, N.Y.
- **Mauro Pennisi, Inc.**, 78-80 West Hoffman Ave., Lindenhurst, N.Y.
- **Jacob Kern & Sons, Inc.**, 56-60 Nichols Street, Lockport, N.Y.
- **Windward Tobacco, Inc.**, 34 Sunburst Circle, East Amherst, N.Y.
- **Capital Candy Company, Inc.**, 32 Burnham Street, Barre, Vt.

Eric Proshansky, Deputy Chief of the Law Department's Affirmative Litigation Division, is leading the City's legal team. Other attorneys include Affirmative Litigation Chief Gail Rubin and division attorney Brad Snyder.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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