



New York Association of Convenience Stores
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January 10, 2006

Mr. Franklin Keel, Regional Director
U.S. Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville TN 37214

REF: DEIS Scoping Comments, Oneida Indian Nation of NY Trust Acquisition

Dear Mr. Keel:

We believe the BIA's analysis of the above-referenced application should fully examine the adverse economic impacts of the Sav-On convenience stores the tribe operates on non-reservation land.

For more than a decade, non-Indian convenience stores in Madison and Oneida counties have suffered the ill effects of unfair competition from the Oneidas, who refuse to collect and remit state and local taxes on cigarettes, motor fuel and other products they sell to non-Indian customers.

Their artificially lower prices have proven irresistible to the customers of licensed non-Indian retailers. By the thousands, they have abandoned tax-collecting stores, which traditionally relied on cigarettes and motor fuel for two-thirds of their total sales. The exodus has intensified since 2000 as the state twice increased its excise tax on cigarettes, creating greater financial incentive for enterprising non-Indian New Yorkers to buy "untaxed" cigarettes at Sav-On.

While we do not yet have research data specific to this application, the accompanying statewide studies by Ridgewood Economic Associates on the loss of sales, tax revenue and jobs attributable to overall cigarette tax evasion in New York are highly relevant and illuminating.

Particularly disconcerting to our member convenience stores has been the unfettered expansion of the Sav-On network on lands outside the tribe's reservation. In case after case, the tribe has purchased prime real estate in Oneida and Madison counties from a non-Indian owner, built or opened a convenience store there, and unilaterally declared it

sovereign Indian land exempt from all forms of state and local taxation and regulation. In some cases, this involved approaching an existing non-Indian retailer and threatening to open a tax-free location next door or across the street if the retailer opted not to sell their store to the tribe.

Surely the federal laws creating the mechanism of placing lands into trust for the benefit of Native Americans did not intend for the BIA to facilitate cherry-picking of non-contiguous, non-reservation commercial property for tax-free tribal businesses to form the "patchwork of sovereignty" alluded to by Judge Scalia in the *Sherrill* case.

Taxation is only one element of the double standard that has been allowed to exist between Indian and non-Indian stores in Central New York. In assessing the community impact of this application, we hope the BIA will examine the accompanying list of laws and regulations intended to regulate convenience stores.

I want to emphasize that we respect the right of the Oneida Indian Nation to operate commercial enterprises. But we believe – and we hope the Bureau of Indian Affairs will agree – that all those who reap the rewards of doing business with New Yorkers bear an obligation to abide by the state and standards for the conduct of such commerce.

Sincerely,

James S. Calvin
President

Drowning in Double Standards

Enforcement of Laws and Regulations Upon Licensed Convenience Stores vs. Tribal Stores in New York State

New York State Statute or Regulation	Subject to enforcement?	
	Licensed Retailer	Tribal Store
Tobacco Products		
Collect/Remit NYS Excise Taxes on Cigarettes	Yes	No
Collect/Remit NYS Excise Taxes on Other Tobacco Products	Yes	No
Collect/Remit NYS and Local Sales Taxes	Yes	No
Obtain/Display NYSDTF Tobacco Dealer Registration	Yes	No
Abide by CMSA Minimum Pricing Law	Yes	No
Ban on Self-Serve Displays of Tobacco Products	Yes	No
Sell Only Cigarettes Bearing NYS Tax Stamps	Yes	No
Criminal Arrest for Possessing Unstamped Product	Yes	No
Require ID From Customers Who Appear Under 25	Yes	No
Undercover Inspections to Detect Sales to Minors	Yes	No
Monetary Fines if Caught Selling to Minors	Yes	No
License Suspension for Repeat Sales to Minors	Yes	No
Post Sign Warning That Sales to Minors Prohibited	Yes	No
Sell Only "Fire-Safe" Cigarettes (effective 6/28/04)	Yes	No
Motor Fuel		
Register Underground Petroleum Tanks with NYSDEC	Yes	No
Periodically Test Underground Tanks, Report Results	Yes	No
Monitor Tanks, Maintain 10-Day Reconciliation Reports	Yes	No
Immediately Report Spills/Leaks to NYSDEC	Yes	No
Sealer of Weights and Measures Tests Pumps for Accuracy	Yes	No
Subject to NYSDEC Petroleum Inspections/Audits/Fines	Yes	No
Collect/Remit NYS and Local Taxes on Motor Fuel	Yes	No
Eliminate MTBE from Motor Fuel (effective 1/04)	Yes	No
Bottle and Can Deposits		
Collect 5¢ Deposit on Carbonated Beverage Containers	Yes	No
Redeem 5¢ Deposit on Carbonated Beverage Containers	Yes	No
Alcoholic Beverages		
Obtain/Display Beer License From NYS Liquor Authority	Yes	No
Monetary Fines if Caught Selling to Minors	Yes	No
License Suspension for Repeat Sales to Minors	Yes	No
Collect/Remit NYS and Local Sales Taxes	Yes	No
Post Sign Warning That Sales to Minors Prohibited	Yes	No
Post Sign Warning Pregnant Women Not to Drink Alcohol	Yes	No

