



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

Retail Member Update

- Barring Court Order, Tax Collection on Indian Sales of Cigarettes to non-Indian Customers to Start Sept. 1
- Deadline Nears for 2011 Retail Tobacco Dealer Registration Renewal; the Latest on Fee Hike Dispute

Tax Collection Scheduled to Start Wednesday

Unless a court intervenes – which is still a real possibility – the State at long last will start collecting taxes on Native American sales of national brand cigarettes to non-Indian customers. The new law taking effect September 1 requires wholesale distributors to deliver only tax-stamped product, and to certify to their manufacturers that they are in full compliance with the Tax Law.

While NYACS welcomes this enforcement action, and it should shift some business back to the tax-collecting side of the street, don't expect to be singing "Happy Days Are Here Again," because:

- Native American brands manufactured and sold on reservations appear out of the reach of the new law. Thus the tribes' tax-free cigarette business will continue to thrive. However, it's illegal to transport large amounts of unstamped product on state highways, so we'll see how the Tax Department deals with shipments between reservations.

- The new law does not apply to motor fuel or to OTP. Tribes will continue to sell millions of gallons of gas and large quantities of smokeless tobacco and cigars tax-free.

- The last enforcement initiative, in the spring of 1997, lasted about a month before Governor Pataki caved in to Indian violence. Just because tax collection starts doesn't mean it will be sustained. We will do all we can to prevent another retreat.

- There will still be other avenues for dodging New York's exorbitant cigarette tax, notably border states and a flourishing black market, so reservation customers will have other options besides returning to your store.

Native American tribes have filed lawsuits in state and federal courts trying to block implementation of the tax collection law. NYACS has filed "amicus" motions in those cases in order to make sure the courts are aware of the retail industry's perspective.

If enforcement does start Wednesday as scheduled, please track your sales carefully.

CONTINUED →

Renewing Your Tobacco Registration for 2011

September 20 is the deadline for retailers to file an application with the state Tax Department to renew their tobacco dealer registration for calendar year 2011.

Because our legal fight over the higher fees the state tried to impose last year is still unresolved, the fee remains frozen at \$100 per store per year until the court rules.

Therefore, the Tax Department will shortly be sending you a notice saying the \$100 fee for 2011 is due September 20, but that if the court subsequently reinstates the higher fees, you will be required to pay the balance at that time.

As you recall, the Governor and Legislature approved hiking the fees to \$1,000, \$2,500, or \$5,000 depending on your gross sales of all products. Many retailers paid these higher fees last September before we won the court order temporarily blocking them. Since then, we have been insisting that the Tax Department give those retailers a refund or credit on the excess payment. We renewed that request at a meeting with the Department earlier this month, but to no avail. They maintain that because the court didn't order them to issue refunds, they're not authorized to do so.

Thus, if you paid \$2,500 last year, the Department has been hanging onto \$2,400 of your money for 12 months that you could have otherwise invested in your business, and instead of letting you use \$100 of it now to pay your upcoming 2011 renewal fee, they're going to make you write a new check for \$100. Unbelievable!

We also are fighting with the Tax Department over the definition of "gross sales" for tobacco registration fee purposes. Last August, we asked them to advise the retail community whether motor fuel should be included (we say it should not) and whether pass-through revenue such as tax receipts and 94% of lottery sales should be included (we feel they should not).

The Department has yet to answer these questions. We pointed out that since the answers will impact the amount of gross sales to be reported on the renewal application you need to file by September 20, that guidance should be issued *now*, not later.

NOTE: September 20 is also the deadline for filing your floor tax return and payment stemming from the July 1 increase in the cigarette excise tax.

NYACS CHAIRMEN'S OPEN GOLF TOURNAMENT / NYACS FALL CONFERENCE

Wednesday-Thursday, September 15-16, Saratoga Springs NY

- Update on Major Industry Issues Impacting the C-Store industry
- Panel: "The New Realities of Tobacco Retailing in New York"
 - Peter Tamburro, Executive Vice President, Nice N Easy Grocery Shoppes
 - Tariq Khan, 7-Eleven Franchisee Owners of Long Island and New York
 - Anne Flint, Retail Purchasing Manager, Cumberland Farms Inc.
- Speaker: "Protect Yourself From New Arsenal of Sales Tax Audit Weapons"
- Vendor Appreciation Dinner, The Irish Times Pub & Restaurant
- Chairmen's Open Golf Tournament, McGregor Links Country Club

To Register Now: www.nyacs.org or call 800-336-9227