

**Statement from Lorillard  
December 9, 2008**

Everyone involved in the sale of cigarettes in New York is keenly aware of the issues surrounding Native American cigarette sales in New York. This is not a new problem.

New York state officials have the legal authority and the responsibility to solve this problem, and they have chosen not to do so. Cigarette manufactures should not be expected to police the trade in untaxed cigarettes. That is the responsibility of the State and law enforcement.

Lorillard Tobacco Company sells its products only to licensed wholesalers and not directly to any Native American customers in New York. It is important to point out that Lorillard does not profit from the allegedly illegal trade in cigarettes. In fact, Lorillard's price to all New York wholesalers is the same whether the wholesalers affix tax stamps to the product once it is purchased or not.

By law, the State has the authority and the ability to suspend the license or to take other action against wholesalers who sell cigarettes without appropriate tax stamps as is required by law. The State has chosen not to take such action to date.

As a practical matter, once cigarettes are sold to licensed wholesalers, Lorillard is not in a position to know where, or to whom, the product will be resold. Even with our system of tracking sales by wholesalers to other wholesalers or to retailers, which gives us historical information as to past sales by our direct accounts, Lorillard does not know whether the cigarettes were sold with or without tax stamps. It is the responsibility of the wholesaler to place the tax stamp on cigarettes for resale – and a primary reason why the State licenses the wholesaler.

Lorillard's contracts and communications with wholesalers to whom it sells cigarettes are clear – all wholesale customers must be "in compliance with all local, state and federal laws governing the sale of Lorillard products, including tax and sales delivery laws." Unfortunately, cigarette manufacturers have been placed in an untenable position by the State's lack of enforcement of the law addressing sales of untaxed cigarettes by Native American retailers and it's unwillingness to develop regulations to effectuate the Indian Tax Exemption Coupon System that would enable the law's enforcement.

In fact, a New York appellate court ruled in May 2008 that the State could not enforce the tax law against wholesalers and collect the tax on the cigarettes sold by Native Americans until the New York State Department of Taxation and Finance adopted the necessary regulations to implement the Indian Tax Exemption Coupon System.

Three administrations have now neglected to adopt these regulations and implement this law. The New York State Department of Taxation and Finance clearly stated the Administration's position when it wrote in a 2006 advisory opinion that it had not altered its "long-standing policy of allowing untaxed cigarettes to be sold from licensed stamping agents to recognized Indian Nations and reservation-based retailers." Furthermore, the Department stated that it would not issue assessments against wholesalers conducting such transactions.

Some call for Lorillard to terminate or limit sales to wholesalers that sell to Native American retailers, yet if Lorillard were to act unilaterally against a wholesaler without

the assistance of New York State, it may be subject to legal action by the wholesaler. Lorillard understands that Philip Morris has been in fact subject to such legal action.

As for the tribes' legal rights to sell untaxed cigarettes to non-tribal members, that matter is in dispute and has been a subject of lawsuits in the past. There are currently lawsuits pending in New York State courts over these and related issues.

Lorillard regularly works with law enforcement authorities to help end counterfeiting and smuggling in New York. Importantly, the Company has sought the State's cooperation and even has offered to extend a voluntary agreement it reached with the New York Attorney General concerning illegal internet sales to cover Native American sales of untaxed cigarettes. The State has never accepted our offer to work under that agreement nor any other reasonable arrangement to address the problem. Despite this, Lorillard remains ready and willing to work with New York authorities through that agreement or any other reasonable arrangement when they take action against the offenders.

Additional points to consider include:

- **New York has one of the highest tax rates on cigarettes in the country.** Currently, the State and New York City combine to collect nearly \$2.5 billion each year from smokers. Smokers in New York City pay nearly \$4.90 in sales and excise taxes per pack of cigarettes, giving New York's governments a profit over ten times that of the manufacturer for each pack of cigarettes sold.
- **In September of 2008 in an effort to try to force the state to act, Mayor Bloomberg filed a lawsuit against eight smoke shops in federal court in Brooklyn.** The suit accuses the small cluster of shops on the Poospatuck Indian Reservation of breaking state and federal law by selling large quantities of cigarettes to bootleggers, who then smuggle the cartons off the reservation and resell them throughout the metropolitan area. The suit does not name any manufacturer, as it is not their responsibility to police the trade in untaxed cigarettes.
- **The New York State Legislature passed, in August 2008, a bill that would change the dynamic for the sale of untaxed cigarettes.** This legislation would require tobacco wholesalers to certify under penalty of perjury that they will not resell cigarettes in violation of the NY Tax Code. Cigarette manufacturers, in turn, can only sell to wholesalers who provide the certification that the legislation requires. Gov. David A. Paterson has not made a final decision to sign or veto this bill, but has announced his intention to talk with Indian tribes in New York State about this issue.
- **A law is on the books to address the sale of untaxed cigarettes to Native American (Tax Law §471-e), but the tax authorities have refused to implement the law.** A state judge recently ruled the law invalid due to New York's failure to adopt regulations that would carry out the law. And, New York State has the authority to revoke the license of any distributor it finds in violation of its law, but it has failed to do so.
- **More than two years ago, the New York State Legislature passed a law to address the problem of Native American cigarette sales (A10859), but it was vetoed by then-Governor George Pataki.**

At the time, Governor Pataki said he was vetoing the legislation because 1) the bill would conflict with the Department of Taxation and Finance's longstanding policy of allowing untaxed cigarettes to be sold from licensed stamping agents to recognized tribal governments and reservation-based retailers; 2) the bill would fail to provide due process or any procedural protections to ensure that stamping agents or wholesalers have, in fact, sold unstamped products; 3) the bill would fail to specify a threshold amount that would need to be reached before notice could be given; and 4) the broad scope of the bill would raise interstate commerce concerns in that it could be interpreted to prevent a New York State licensed stamping agent that is located in another state from obtaining cigarettes from a manufacturer for sale in such state.

At every turn, we look forward to working with New York State to crack down on those who operate outside of the law.

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