

SENECA COUNTY BOARD OF SUPERVISORS

SPECIAL MEETING

December 27, 2010

4:30 p.m.

Call to Order

Chairman Lafler called the meeting to order at 4:39 P.M.

Roll Call of Members by the Clerk

Thirteen members of the Board answered roll call. Mr. Kaiser was not present

Pledge of Allegiance and Moment of Silence

Communications:

206. From Robert J Pagano, Jr., president, ITT, a copy of a letter to Congressman Hanna, dated December 21, 2010 regarding opposition to the conveyance of "land into trust" to the Cayuga Indian Nation.

207. From James S. Calvin, president, NYACS, a copy of a letter to Governor Paterson dated September 1, 2010 urging him to issue an executive order suspending the July 1 cigarette tax hike until full and fair tax collection begins.

Comments by Chairman Lafler

Chairman Lafler read Communication #206, a letter to Congressman-Elect Hanna from Robert J.; Pagano, Jr., president of ITT :

Congressman Elect Hanna:

Thank you for taking time to discuss the "land into trust" issue and its impact on local communities and businesses.

Goulds Pumps, Inc., as the largest private employer in Seneca County, recognizes the potential for adverse impact upon the businesses and landowners of our community if a substantial portion of the area's available property becomes exempt from taxes. This is likely to lead to increased taxes for remaining property holders.

In our case, higher taxes would negatively impact our competitive position in the global market, which could translate into lower demand for workers at our Seneca Falls manufacturing facility.

Additionally, the obligation to deliver public services to increasing numbers of non-taxed residents is likely to result in a degradation of services and an adverse image for those aspiring to draw new talent to the area.

Perhaps most importantly, the impact to local businesses that must compete in an imbalanced economic state is likely to drive businesses from the community resulting in additional job losses. This has already begun and is likely to escalate should the "land to Trust" initiative succeed.

For those reasons, we oppose the conveyance of "land into trust".

Comments by Mr. Shipley, Indian Affairs Committee Chair

Mr. Shipley read a statement, "...we ask you, as our Congressman, to provide the leadership necessary to legislate measures to stop the DOI/BIA from overstepping their authority and to reject and prohibit this deliberate LIT action by a Federal Agency. The U.S. Constitution should not be circumvented to grant special privileges...to any group that advocates a sovereign nation within the United States of America..." A copy of his statement is attached hereto.

Comments by Peter Tortorici, Chair, Cayuga County Legislature

Chairman Tortorici appealed to Congressman Hanna stating that Cayuga County and Seneca County "can't do this alone" and we "need a louder voice in Washington D.C." Several legislators from Cayuga County were present.

Comments by Dr. David Dresser, former Supervisor and Chairman of the Indian Affairs Committee:

Dr. Dresser provided Congressman Hanna a copy of a timeline of the Cayuga Indian Land Claim / Trust Application. A copy is attached hereto.

Comments by Menzo Case, Seneca Falls Savings Bank

Mr. Case spoke about the negative economic impact on Seneca and Cayuga counties should the Cayuga Nation's application for land in trust be granted.

Comments by Jeff Shipley, Chamber of Commerce

Mr. Shipley spoke about the negative impact on tourism and businesses that would occur if the Cayuga Nation's application for land in trust were granted. A copy of his statement is attached hereto.

Comments by Robert McKeveny, Seneca Falls Central School District

Mr. McKeveny address the impact that land in trust would have on the Seneca Falls School District. A copy of his statement is attached hereto.

Comments by Tom Kime, IDA Chair

Mr. Kime stated that tribal businesses aren't promoted by IDAs because they fail to collect taxes and thus decreases the property tax base. The IDA's goal is to promote businesses that will generate sales tax that can be passed on to the county population.

Comments by Brad Jones, Chair, Citizen's Advisory Committee on Indian Affairs

Mr. Jones read a statement that focused more on the "root cause of this debacle". A copy of his statement is attached hereto.

Comments by Rich Ricci, Citizen's Advisory Committee

Mr. Ricci stated that history proves that the Cayuga Indian Nation have been paid eight times for the land claim area. He questioned if Seneca County will also have to fight claims from other Cayuga Indians such as the Algonquin Cayugas, Wisconsin Cayugas, etc. Mr. Ricci provided a copy of an article dated November 11, 2010, "Native American tribes seek trade ties with Turkey", of which a copy is

attached hereto; and a copy of a report prepared by the Republican Staff of the U.S. House Committee on Homeland Security, “Tobacco and Terror: How Cigarette Smuggling is Funding our Enemies Abroad”, or which a copy of attached hereto.

Comments by Rich Tallcot, Citizen’s Advisory Committee

Mr. Tallcot appealed to Congressman Hanna to uphold and enforce the Fourteenth Amendment of the U.S. Constitution.

Comments by Philip Spellane, County’s Land-Claim Attorney

Mr. Spellane gave an overview of the Carcieri Fix and stated that the Cayuga Nation has no right to make an application because it is not a federally recognized tribe.

Statement by Congressman Hanna

Congressman Hanna promised that he would carry the concerns expressed to Washington D.C. He reminded the board that he ran on a platform that opposed land into trust stating that “there is no reason to be anxious that I am not committed” to supporting the counties. He also stated, “I have been offered money from tribes and refused it” and if “it is done accidentally I will return it” and closed his comments with, “I get it and I’m with you”.

Special order of the day

The meeting adjourned at 6:19 p.m.

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Comments from Robert Shipley - pg #1 Of #2
Indian Affairs Chair - SENECA COUNTY BOARD OF SUPERVISORS

December 27, 2010

Congressman Elect Hanna, thank you for coming to listen to our concerns regarding the Cayuga Indian Nation petition to the Department of the Interior of placing Cayuga purchased lands into Federal Trust... permit me to give you the 50,000 foot view as you Consider the following:

- Seneca County does not now, nor have we ever had a NY State or federally recognized Indian Reservation.
- The "Draft Environmental Impact Statement (DEIS) 05-22-09 prepared by the DOI which declared "no significant impact" and the subsequent Final Environmental Impact Statement (FEIS) 10-13-10 was unchanged and unimproved... this too ignored our voiced and written concerns when it also concluded "no significant impact" on Seneca and Cayuga Counties. I submit both documents and the Bureau of Indian Affairs, itself are "seriously flawed"... simply stated, the BIA is composed of biased Indians with a predetermined agenda. This Federal Agency must be held accountable for their arrogant and reckless actions by the US Congress.
- The Cayuga Indian Nation "WAS NOT" recognized by or under federal jurisdiction a/o 06/01/34 and therefore not subject or "entitled to the benefits" of the Indian Reorganization Act of 1934 as evidenced by the Supreme Court decision - 02-24-09 in Governor Carcierri of Rhode Island vs. Secretary Salazar of the DOI. That stated... the DOI/BIA is ignoring this Supreme Court ruling and continues moving forward on the placement of recently purchased lands within Seneca & Cayuga Counties into a Federal fee to Trust acquisition. Who will hold the DOI accountable for forcing expensive taxpayer paid litigation to defend a process which the BIA clearly lacked authority under the 1934 Indian Reorganization Act rules... The Counties surely expect this unjust action will be eventually condemned and stopped by US Federal Courts?.
- The Carcierri Decision is a significant defeat for hundreds of unrecognized Indian Tribes... the decision furthermore calls into question the DOI seventy plus year practice of arbitrarily taking land into trust. Indian Tribes can no longer be protected by random BIA declarations and now may not even qualify for basic Federal services or advantages such as health, employment and educational services... Thus the fundamental reason that Interior Secretary Salazar is incessantly pushing Congress to legislate a "Carcierri Fix" to circumvent Federal Laws and provide the BIA

to take land by means

Comments from Robert Shipley – pg #2 Of #2
Indian Affairs Chair - SENECA COUNTY BOARD OF SUPERVISORS

December 27, 2010

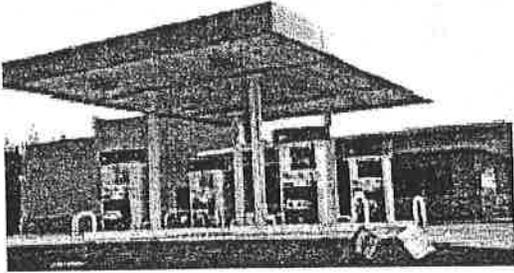
- The Cayuga Indians left New York State some two hundred (200) years ago and have only come back here now... NOT to promote the economic growth of Seneca County... but to "milk the system" and fill their pockets with "tax evaded" profits obtained from the sale of untaxed gasoline and tobacco.
- Seneca County now has "dueling Indian Tribes" competing for the sale of untaxed Cigarettes and Gasoline with the opening (12-15-10) of a second Indian gas station and smoke shop less than two miles away... owned by the Seneca-Cayuga Tribe of Oklahoma. I find it ironic that Cayuga Nation of NY Chief Halftown says he is outraged and considers his brother tribe from Oklahma as "a foreign tribe invading our land" – see Finger Lakes Times article of 12-21-10. *attached*

In conclusion, we ask you, as our Congressman, to provide the leadership necessary to legislate measures to stop the DOI/BIA from overstepping their authority and to reject and prohibit this deliberate LIT action by a Federal Agency. The U.S. Constitution should not be circumvented to grant special privileges or exclusive rights to any group that advocates a sovereign nation within the United States of America for the express purpose of evading tax collection... surely you would agree this is misguided and plainly wrong.

Lastly I ask you to uphold your sworn oath of Office... to protect and defend the US Constitution... i.e. the People and Businesses of Seneca & Cayuga Counties. Terminate this conflict now that surely would adversely affect the fate of our hardworking Citizens and potentially doom future generations...

Thank you for your attention.

Cayugas have competition



Oklahoma tribe's gas station, store opens in Seneca Falls; Halftown says 'It's wrong'

By DAVID L. SHAW - dshaw@flltimes.com

SENECA FALLS — A second Indian tribe-owned gas station and convenience store has opened in Seneca Falls, a move that has the leader of the Cayuga Indian Nation questioning its legality and comparing it to a foreign invasion.

Named Sky Dancer, the store at East Bayard and Stevenson streets, is owned by the Seneca-Cayuga Tribe of Oklahoma and opened Wednesday.

The Cayuga Indian Nation purchased and opened the Lake Side Trading gas station and convenience store at Route 89 and Garden Street Extension in 2004.

Neither store charges sales tax on cigarettes or gasoline purchases, the source of ongoing federal court litigation. The Oklahoma-based tribe is selling several brands of cigarettes it makes at its reservation cigarette-making facilities in

the Miami, Okla. area, plus several name brands. The gasoline it sells is also from Oklahoma, provided by Eagle Fuels. Monday, regular gas was selling for \$3.08.9 per gallon and premium gas was selling for \$3.38.9 per gallon. Diesel fuel was selling for \$3.15.9 a gallon. Sky Dancer brand cigarettes made by the tribe were selling for \$3 per pack or \$24.50 per carton. "We've agreed to sell at the same price as the Cayugas," said store manager Kayla Haney. "If we don't have a particular brand for a customer, we can usually get it from our vendor." While the store is well stocked with cigarettes, it is waiting for items like snack food, candy, coffee and soda to arrive. There is a drive-thru window in the back that is designed to serve cigarette buyers, but it won't open until spring. Town officials have said the tribe needs a variance to operate the window due to traffic concerns. "Business has been pretty good so far, considering we've had a pretty soft opening," Haney said.

Clint Halftown, head of the Cayuga Nation, now based in Seneca Falls, is not thrilled by the new business. "It's wrong. They are not from here and have been in Oklahoma for a long time," Halftown said. "It's like a foreign tribe invading our land. They are trespassing and I don't think they are allowed by state tax law to sell taxfree cigarettes or gasoline." "They could be challenged as an unregistered, unrecognized state tribe. We're considering our options," Halftown said. A spokesman for the state Department of Taxation and Finance was asked about the Seneca-Cayuga tribe's status to sell tax-free items. He said he would research the answer.

#8

A Timeline of Cayuga Indian Land Claim/Trust Applications

(For Congressman-elect Richard Hanna)

David L. Dresser

December 27, 2010

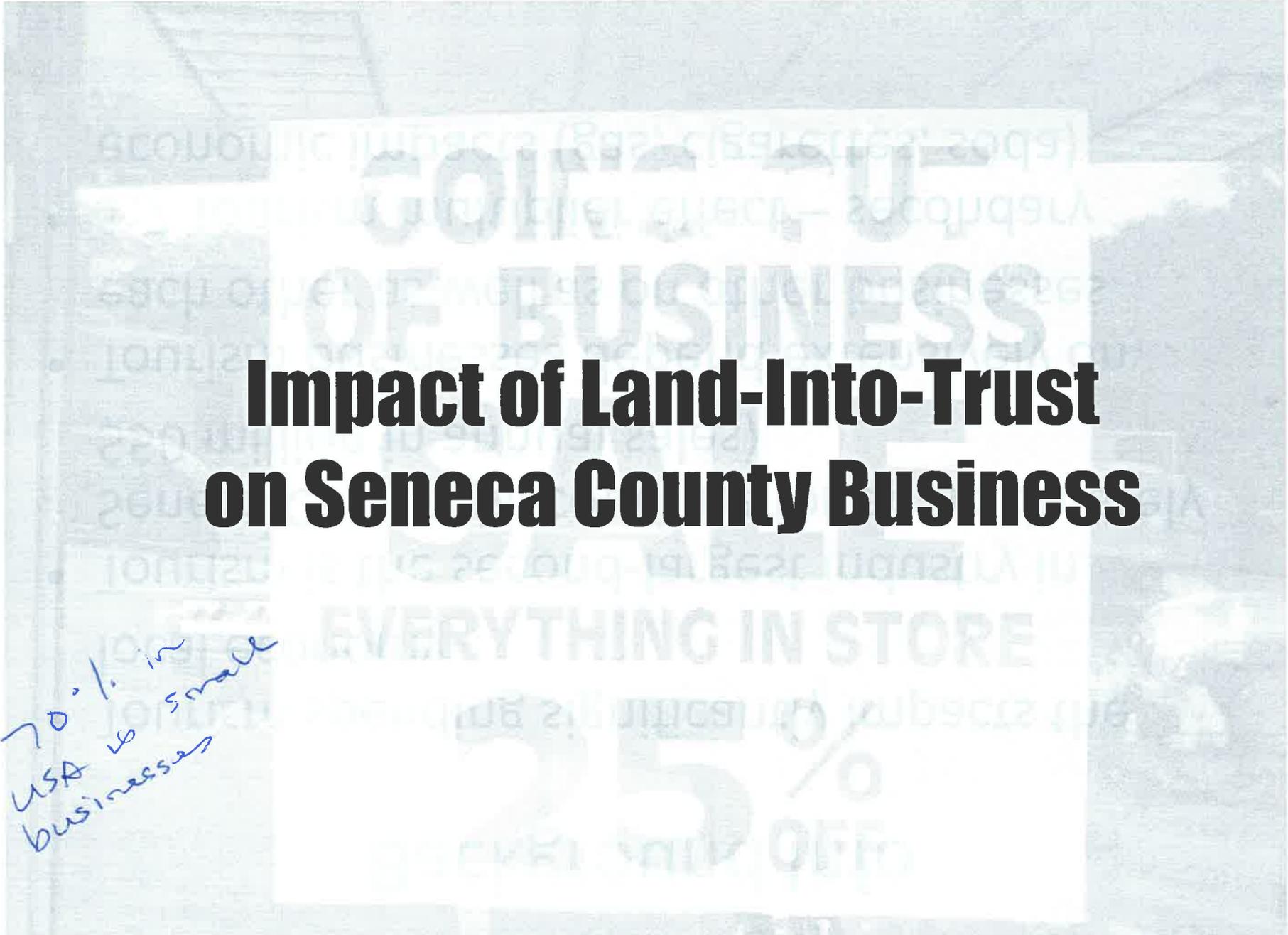
- NYS pays Steel Trap & Fish Carrier \$500/yr @ for 3M less 64,015 acres (1789 & 1790)
- *U. S. Indian Trade and (Non-) Intercourse Acts establish federal authority (1790 & 1793)
- *Treaty of Canandaigua “acknowledges” Cayuga and Oneida (state) reservations (1774)
- *NYS pays \$1,800/yr. more for all but 3 sq. mi. & \$4,800 for last 3 sq. mi. (1795 & 1807)
- *Dawes/Allotment Act encourages U. S. tribes to deed reservation land to members (1887)
- NYS agrees to \$7,342/yr for NY Cayugas, \$1,831/yr for Western Cayugas (1913)
- Congress pays Canadian Cayugas \$100,000 following international tribunal (1926)
- *Indian Reorganization Act establishes land-into-trust process under 25 CFR 151 (1934)
- U.S. settles 1951 claim w/ \$70,000 to be shared by NY & OK Cayugas (1978)
- H.R. 6188: Congressman Lee proposes land transfer ratification retroactively (12/19/79)
- H.R. 6631: Congressman Udall proposes Hector & Sampson Park reservation (2/26/80)
- *Cayugas file land claim w/ federal District Court for Northern NY (11/19/80)
- U.S. District Court says 1795, 1807 treaties invalid: no Congressional ratification (2000)
- Judge & jury award the (two) tribes \$38.5M in damages + \$211M interest (2000 & 2001)
- Senator Nozzolio introduces bill to tax Indian sales to non-Indians, upstream (1/8/03)
- *Cayuga Indian Nation (CIN) buys gas station & store on Rt. 89 in Seneca Co. (10/3/03)
- State regs requiring sales tax to be collected from distributors to be effective (12/1/03)
- *Seneca County Board of Supervisors (BOS) passes “hold harmless” resolution (12/9/03)
- *CIN opens electronic bingo parlors in Seneca & Cayuga counties (7/1/04)
- Pataki & Halftown sign MOU: \$150M, 10,000 acres, casino;\$3M/yr. & parity (11/17/04)
- Forum at Chiropractic College draws 500 opposed to Governor’s proposal (1/14/05)
- Cayuga County Legislature votes 9-6 for settlement if paid for lost sales taxes (1/25/05)
- Seneca County BOS supports Seneca-Cayuga settlement, not CIN settlement (1/25/05)
- Seneca Co. BOS Chair sends Pataki letter re: hold harmless, price parity, etc. (2/9/05)
- Sullivan County Legislature votes 6-3 for 5 casinos, w/ infrastructure provided (2/10/05)
- State Senate and Assembly hold public hearings in Auburn and Syracuse (3/9&11/05)
- *U. S. Supreme Court favors City of Sherrill (NY) 8-1 vs. Oneida Indian Nation (3/29/05)
- BOS Chair Shipley writes Secretary Norton for deferral of action on trust apps (4/13/05)
- *CIN applies for trust status for 3 Cayuga Co. parcels & 2 Seneca Co. parcels (4/14/05)
- Pataki withdraws settlement proposal following Sherrill decision (4/21/05)
- Lake Side Tradings’ Seneca Co. gas pumps are inspected under court order (5/4/05)
- Tax collection on sales to non-Indians delayed from 9/1 to 3/1, after 6/04 veto (5/29/05)
- *Second Circuit Court of Appeals dismisses Cayuga Land Claim using laches (6/28/05)
- Senator McCain expresses concern about off-reservation/out of-state casinos (6/28/05)
- Pombo’s House Resources Committee holds hearing re: NY Indian land claims (7/14/05)
- Seneca-Cayugas pay \$70,186 taxes due on 229 acre Aurelius farm, Cayuga Co. (8/18/05)
- Seneca Co. sends testimony to Resources Committee re: off reservation casinos (9/25/05)
- *Seneca Co. passes local law prohibiting illegal gambling as public nuisance (9/27/05)
- Counties meet with Governor’s counsel in Albany re: trust applications (10/3/05)
- *CIN temporarily closes electronic bingo hall in Seneca Co., then Cayuga Co. (9/30/05)
- Sen. Schumer visits Seneca County, supports hold harmless, not land in trust (10/12/05)
- Seneca County BOS calls for moratorium on NY land being taken in trust (10/25/05)

BIA notifies the State, counties, & municipalities of CIN's trust application (12/5/05)
 NY Farm Bureau meets with Pombo's staff with 9 "talking points" (12/12/05)
 CIN buys 70-acre SHARE farm in Cayuga County, not as trust land (12/22/05)
 Pataki seeks delay in sales tax collection from Indians until January 2007 (1/17/06)
 Syracuse Post-Standard publishes "talking points" & comment on Oneidas (1/19/06)
 Counties meet with Congressman Boehlert in Utica re: land into trust issues (1/27/06)
 U. S. Justice Department sides w/ Cayugas, urges Supreme Court to hear appeal (1/19/06)
 CIN pays property taxes (over)due in both counties as required for land in trust (2/9/05)
 State, counties, and municipalities submit responses to CIN trust application (2/10/06)
 Federal Register notice of public scoping session, March 1, 6:30pm, at NYCC (2/13/06)
 BIA holds EIS public scoping meeting at NY Chiropractic College; 500 come (3/1/06)
 Counties invite DOI Associate Deputy Secretary Cason to visit counties (5/22/06)
 *Senator Schumer hosts meetings of four counties w/ Cason in D.C (9/14/06)
 NYSAC Committee meets w/ Governor's Counsel re: land-into-trust (1/29/07)
 Gov. Spitzer confirms talks w/St. Regis Mohawks re: casino in Sullivan County (2/2/07)
 Seneca Co. committee chair sends testimony to BIA vs. trust land for Oneidas (2/15/07)
 *Settlement terms: 10,000 acres, 6 clusters, no gaming, \$\$ from Catskill casino (5/23/07)
 Seneca Co. BOS holds public meeting at SF Community Center re: settlement (6/18/07)
 Amended proposal guarantees all conditions except gaming if lawsuits fail (7/20/07)
 *Counties reject original proposal, back Catskill casino if CIN drops trust apps (8/14/07)
 Sec. Kempthorne denies distant casinos to Mohawks & Stockbridge Munciees (1/?/08)
 *Oneidas to get 13,086 of 17,370 acres in trust under BIA's preferred alternative (2/22/08)
 Seneca Co. BOS urges Congress to deny land in trust for tribes violating laws (10/14/08)
 Seneca Co. BOS urges federal reps to draft legislation to amend trust regs (10/?/08)
 *State Supreme Court Judge Fisher: CIN's stores not on "qualified reservation" (2/18/09)
 *U.S Supreme Court in Carcieri v. Salazar denies 31 RI acres for Narragansetts (2/24/09)
 State Appellate Court rules 4-1 that CIN stores are on a "qualified reservation" (5/1/09)
 *BIA releases Draft Environmental Impact Statement (DEIS), sets 6/17 hearing (5/13/09)
 Senecas cut deal with Sullivan County for Catskill casino (5/13/09)
 More than 1,000 attend, 77 speak at hearing on DEIS; most are highly critical (6/17/09)
 Seneca Co. BOS rejects preferred alternative in DEIS & submits comments (6/7/09)
 Schumer wants DEIS rewritten to recognize impacts and reflect reality (7/1/09)
 Comments on DEIS from public, Ian Ayres, O'Brien & Gere sent to BIA (7/2/09)
 Seneca Co. Mgr. & Cayuga Co. Legislature Chair request stay on land into trust (7/2/09)
 Schumer calls Secretary Salazar and urges him to revamp DEIS (7/20/09)
 *Second Circuit Court rules Oneida Nation sovereignty prevents tax foreclosure (4/30/10)
 *NY Court of Appeals rules 4-3 Cayugas' stores are on "qualified reservation" (5/11/10)
 Counties agree to appeal Court of Appeals ruling to U.S. Supreme Court (6/18/10)
 Counties approve amicus brief for Madison & Oneida counties re: reservation (8/4/10)
 *U.S. Supreme Court to hear Madison & Oneida counties' foreclosure case (10/12/10)
 BIA releases FEIS: comments due by November 22 (10/22/09)
 *Former supervisor Dresser submits scathing 14-page critique of FEIS (11/7/10)
 Counties' comments on flawed FEIS sent to BIA by Harris Beach attorneys (11/19/10)
 Governor's settlement w/Stockbridge-Muncee Band involves Catskill casino (11/22/10)
 Schumer urges Deputy Secretary Hayes to reject CIN's trust applications (11/29/10)
 *CIN's land holdings in Seneca County reach 1,110 acres (12/7/10)
 *Seneca-Cayugas of OK purchase Seneca Falls gas station & store (12/9/10)
 *Schumer announces "Carcieri fix" not included in year-end legislation (12/23/10)

#10
JEFF SIMPLEY
72/27/2010

Impact of Land-Into-Trust on Seneca County Business

* 70% in
USA is small
businesses



Background Info

- Tourism spending significantly impacts the local economy
- Tourism is the second-largest industry in Seneca County (accounting for approximately \$50 million in annual sales)
- Tourism businesses depend extensively on each other as well as on other businesses
- 1:7 Tourism multiplier effect – secondary economic impacts (gas, cigarettes, soda)

Convenience Stores in Seneca County

- Approximately 20 convenience stores in Seneca County
 - Majority of these are chain-owned (Byrne Dairy, Nice N Easy, Red Apple, Express Mart)
 - Wilson Farms (44th ranked chain) reported cigarette sales down 40% and overall sales down 10% since July 1
 - It has responded by cutting 20% of administrative staff, reducing hours and cutting capital projects
- 

More than a “smoke”

- New York charges the HIGHEST excise tax in the nation: \$4.35/pack
- Average price per pack is between \$9-\$12
- Average price per pack at Indian-owned stores is between \$3 - \$10
- NY~~S~~ACS report convenience stores have suffered an average drop in cigarette sales of 25-35%, with stores in close proximity to Indian businesses suffering losses up to 45%

More than a “smoke” cont.

- NYS has raised cigarette excise taxes a whopping 691% over the last 10 years
- Higher taxes are not effective smoking deterrent when coupled with poor legislative policy, as estimates suggest only 5% reduction in NY smokers
- Fewer customers buying cigarettes at convenience stores means fewer sales of other merchandise (food, soda, lottery)

Possible Impacts of BIA Decision

- Wine Industry
 - Wine production/retail
- Agriculture Industry
 - Meat processing
- Casino Gaming — *one destination in mind. customers do NOT see/stop anywhere else.*

#11

SENECA FALLS CENTRAL SCHOOL DISTRICT

**DISTRICT OFFICES
P.O. BOX 268, 98 CLINTON STREET
SENECA FALLS, NEW YORK 13148-1497**

**ROBERT MCKEVENY
SUPERINTENDENT OF SCHOOLS
TEL: 315-568-5818**

**ROBERT J. BOULWARE
BUSINESS MANAGER
TEL: 315-568-5874
FAX: 315-712-0535**

December 27, 2010

Congressman-Elect Richard Hanna
PO Box 118
Utica, NY 13503

Dear Congressman-Elect Hanna:

Good evening. My name is Robert McKeveny. I am the Superintendent of Schools in the Seneca Falls Central School District.

On behalf of the Seneca Falls Central School District Board of Education, I am here to inform you of the school district's continued support of the Seneca County Board of Supervisors in regard to the Cayuga Indian Nation Land into Trust request and the collection of taxes to sufficiently fund a quality educational program in an outstanding school district (evidenced by the United States Department of Education Blue Ribbon School recognition, SMART Technology's recognition as a SMART Showcase School District, and excellent achievement results on NYS Assessments and Regents Exams.)

The district's current enrollment is 1,258 students. *→ 80 less after last year.* The district's operating budget for the 2010 – 2011 school year is \$24,580,294. Tax levy collections are utilized to fund \$11,499,332, or 46.8%, of the operating budget. (The remainder of the budget consists of 47% State Aid and 6% other revenues.) It is important to note that 51% of the district's tax base is in the Land Claim area. The school district realizes that limited property has been requested to be placed into trust status. However, if approved, tax levy dollars would be removed from the district's budget. It is also understood that approximately 10% of the land in the Seneca Falls claim area has been purchased. A subsequent request to place this land into Trust Status could result in an additional \$586,466 (10% of the existing tax levy) being removed from the school district's tax rolls. Ultimately, if all land in the claim area was purchased and application was made, and approved, to place it into Trust Status, the district could be faced with a potential loss of \$5,864,659 (51% of the tax levy) from the tax rolls.

As you are well aware, the current economic climate and continued decline of state aid (loss of approximately \$3,000,000 during the past two years), the district is not in a position to ask residents to make up the loss of any tax levy dollars. The loss of aid and potential loss of tax base puts the district in a very precarious financial situation.

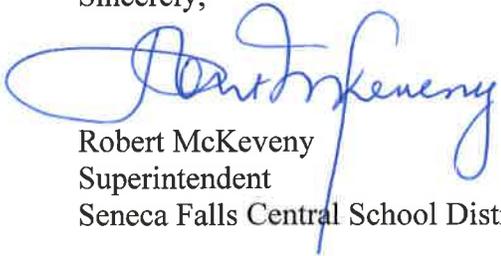
While Seneca Falls Central School District continues to support Seneca County's effort to maintain a tax base, the Board of Education and all district employees remain fully committed to the mission of providing a quality education to all students. Quality educational opportunities prepare students for their next stage of learning, including post-secondary education, career opportunities, and military experiences. As you are aware, the district is bound by federal legislation to provide a "free and appropriate public education" to all enrolled students. You may also be aware that the district has enrolled Native American students during the 2010 – 2011 year. As is the case with all students, these new enrollees are welcomed and entitled to the same quality education as all previously enrolled students. Caring, dedicated, and committed administrators, faculty, and staff provide instruction in a safe and secure school environment. These beliefs are shared by the Board of Education and all district employees and are shared with the school community.

While the Seneca Falls Central School District remains committed to its mission, it is critically important that current levels of funding remain intact. Support from our federal, state, and local leaders is essential to the future of the Seneca Falls Central School District.

The Seneca Falls Central School District Board of Education and I look forward to continuing our efforts with the Seneca County Board of Supervisors, federal, and state leaders to maintain the existing tax base and funding of the school district.

Thanks for listening and thanks for your interest in the Seneca Falls Central School District.

Sincerely,



Robert McKeveny
Superintendent
Seneca Falls Central School District

Cc: Seneca Falls Central School District Board of Education Members
Mr. Chuck Lafler, Chairman Seneca County Board of Supervisors
Mr. Peter Same, Seneca Falls Town Supervisor

Forulee Nasser
Hina Garzon, Board member

#13

Richard Hanna Visit to Seneca County – Monday, December 27, 2010

Comments submitted by Brad Jones

- Congratulations on your recent victory, and welcome again to Seneca County.
- A special thank you to Dr. Dresser for his report on the history of the land claim, and land-in-to trust.
- My comments will focus more on the “root cause of this debacle”. At best, what we are talking about with you this afternoon Congressman is nothing more than a sham!

1) Lawyers, politicians, and greedy entrepreneurs, are the problem, not Cayuga tribal members. Lawyers, politicians, and entrepreneurs are feeding off each other!

2) Cayugas are most likely good people, however, I have never met one. By a show of hands, if you have never been introduced to a tribal member like me, please raise your hand? Indeed, something smells – only a handful of tribal members are here in Seneca County today. What is the end game?

3) The Cayuga name is being used; their ancestry is being abused; this is nothing more than a money game being played out by others.

4) Everyone seems to be looking the other way ---- Apathy / 50 ft. rule?

5) Sale of cigarettes and gasoline are not completely funding the purchases of land – dirty money / money laundering is part of this game. I am requesting that our County leaders call in the FBI to investigate. We have given up with our state and federal legislators.

6) Look at the maps – one can see that their (whoever they are) strategic plan is unfolding quickly --- checker boarding and contiguous purchases are being planned out well (See attached hypothetical scenario).

7) Negotiation / nor settlement are on the table. I want to personally thank the Seneca County Board of Supervisors and the Cayuga County Legislature for standing strong. Together, we will win.

8) It's hard to believe that 162 years ago, Elizabeth Cady Stanton, with many other women of distinction, fought for the right to be equal, and the right to vote (here in Seneca Falls). Today, I, along with fellow residents, fellow citizens, and fellow taxpayers, are faced with having our rights taken away by legislators who have been bought, and a judicial system that is broken.

I only have one request to our new Congressman, Richard Hanna – don't drink this so-called Cayuga kool-aid.



THEIR TEN YEAR PLAN

Suppohkewick

- In 2003, the Cayuga Tribe purchased what is now called Lakeside Trading with the now obvious plan to sell untaxed gasoline and cigarettes to non-Indians, keeping this illegally obtained tax revenue to fund land purchases in Seneca County.
- Since that time they have purchased 1,100 acres, 955 of which are located in the Town of Seneca Falls. Their rate of purchases has been accelerating with 435 acres being purchased 2010 YTD.
- The attached map shows the location of these purchases which also clearly demonstrates their purchases directly violate the Supreme Court's direction that they are not to "checker board" the area.
- If we want to forecast their purchase plans just for the Town of Seneca Falls, we can use two scenarios. The first is the more conservative of the two, using this year's purchases as the projection for future purchases per year. Based on this rate, we can expect the following:

YEAR	NEW PURCHASES	TOTAL PURCHASES	% OF TOWN (15,300 acres)
2011	435	1,390	9.1 %
2012	435	1,825	11.9 %
2013	435	2,260	14.8 %
2014	435	2,695	17.6 %
2015	435	3,130	20.4 %
2016	435	3,565	23.3 %
2017	435	4,000	26.1 %
2018	435	4,435	29.0 %
2019	435	4,870	31.8 %
2020	435	5,305	34.7 %

- Since they have been accelerating their rate of purchases it would not be unrealistic to expect them to be purchasing at a higher rate per year which most likely will mean the actual totals will be higher than shown above.

Based on this conservative forecast, I expect, that by 2020, the Indians will own well in excess of one third of the Town of Seneca Falls!

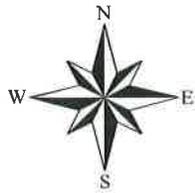
Parcels Owned By The Cayuga Nation As Of December 7th, 2010 in Seneca County

Town	Tax Map	Prop Loc	Type	Assessed Value	Acreage	Purchase Price	Sale Date
Varick	05-1-47	Route 89	land	65,300	.22	785,259	12-21-2007
Varick	05-1-65	Cty Rd 124	house	236,000	145.00	*Incl	12-21-2007
Varick	05-1-36	Cty Rd 124	house	78,600	.64	95,000	09-30-2008
Seneca Falls	26-1-04.111	Ovid St	land	87,400	99.70	430,000	03-28-2008
Seneca Falls	26-1-05.111	Spruce Ln	land	70,000	15.70	122,000	03-28-2008
Seneca Falls	36-1-52	Ovid St	land	27,000	30.00	*Incl	03-28-2008
Seneca Falls	32-1-01.12	Bayard St	land	18,900	28.20	328,000	03-28-2008
Seneca Falls	32-2-28	Bayard St	land	27,500	37.90	*Incl	03-28-2008
Seneca Falls	32-1-07	Bayard St	land	51,200	81.40	122,022	06-21-2007
Seneca Falls	32-1-14	Bayard St	land	47,700	57.30	153,377	06-21-2007
Seneca Falls	32-1-29.11	Bayard St	land	14,500	44.90	*Incl	06-21-2007
Seneca Falls	32-2-34.11	Route 89	land	61,700	84.70	296,450	06-19-2008
Seneca Falls	36-1-48.1	Route 89	bus	343,000	10.40	650,000	02-28-2005
Seneca Falls	36-1-48.2	Route 89	bus	307,600	2.90	*Incl	02-28-2005
Seneca Falls	36-1-49	Route 89	bus	300,000	.69	210,000	10-03-2003
Seneca Falls	38-1-08.12	Farron Rd	land	9,600	14.30	5,500	07-23-1996
Seneca Falls	38-1-08.112	Farron Rd	land	2,300	1.51	2,000	09-10-1997
Seneca Falls	32-2-01	Route 89	bus	63,000	.72	200,000	07-09-2008
Seneca Falls	32-2-49.3	Route 89	land	18,000	.72	*Incl	07-09-2008
Seneca Falls	26-1-04.112	Ovid St	house	129,400	1.40	160,000	11-21-2008
Seneca Falls	36-2-12	Route 89	bus	110,000	.60	160,000	12-19-2008
Seneca Falls	36-2-13.1	Route 89	bus	120,000	.87	220,000	02-27-2009
Seneca Falls	23-2-43	Seneca Rd	house	50,600	.26	26,000	06-22-2009
Seneca Falls	36-2-14	Route 89	land	21,400	1.40	55,000	09-03-2009
Seneca Falls	36-2-13.2	Garden St	house	105,300	2.64	150,000	12-03-2009
Seneca Falls	38-1-05.2	Farron Rd	house	54,600	1.40	40,000	12-24-2009
Seneca Falls	38-1-03.111	Cosad Rd	land	84,000	83.56	200,000	03-01-2010
Seneca Falls	32-3-59	Lake Rd	house	132,100	1.60	185,000	03-02-2010
Seneca Falls	36-2-15	Route 89	house	109,000	1.04	150,000	03-08-2010
Seneca Falls	36-1-58	E Bayard St	house	478,000	175.40	975,000	03-29-2010
Seneca Falls	26-1-35	Spruce Lane	house	125,000	.40	170,000	06-18-2010
Seneca Falls	36-2-68.1	Lake Road	house	230,000	1.76	280,000	06-25-2010
Seneca Falls	23-2-70	Seneca Rd	house	45,000	.22	52,500	07-23-2010
Seneca Falls	32-1-01.11	E Bayard St	land	14,800	19.06	1.00	07-26-2010
Seneca Falls	32-1-03	E Bayard St	house	97,800	.35	179,999	07-26-2010
Seneca Falls	36-2-64	L. Lower Rd	house	225,500	1.50	390,000	07-26-2010
Seneca Falls	36-3-08	L.Lower Rd	land	117,600	.50	*Incl	07-26-2010

Seneca Falls	26-1-17	Briarwood Cir	house	86,600	.50	130,000	07-26-2010
Seneca Falls	26-1-36	Spruce Lane	house	118,500	.34	130,000	07-26-2010
Seneca Falls	38-1-75	Cosad Road	house	90,000	7.30	90,000	08-23-2010
Seneca Falls	38-1-04.3(P)	Farron Road	land	175,700	39.93	175,000	09-23-2010
Seneca Falls	36-1-51	Farron Road	house	100,500	98.80	350,000	11-19-2010
Seneca Falls	26-1-09	Spruce Lane	house	108,600	.80	130,000	11-19-2010
Seneca Falls	20-3-44	Ovid Street	bus	150,500	1.50	135,000	12-07-2010
TOTALS				4,909,300	1100.41	7,933,108	

- Incl means this parcel was included in the sale price listed above it.
- Bus means business

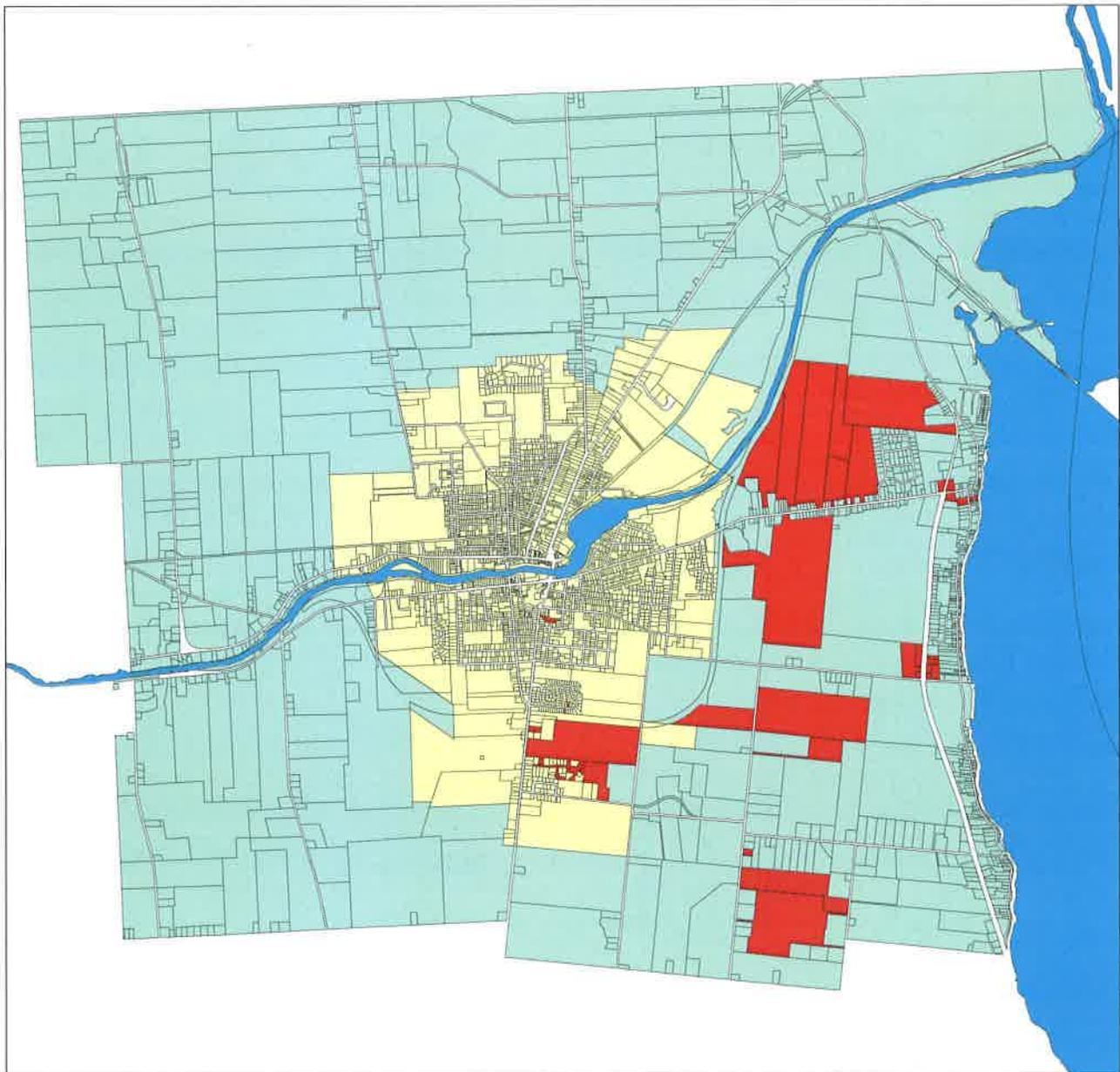
Cayuga Nation Owned Lands in the Village & Town of Seneca Falls as of December 7, 2010



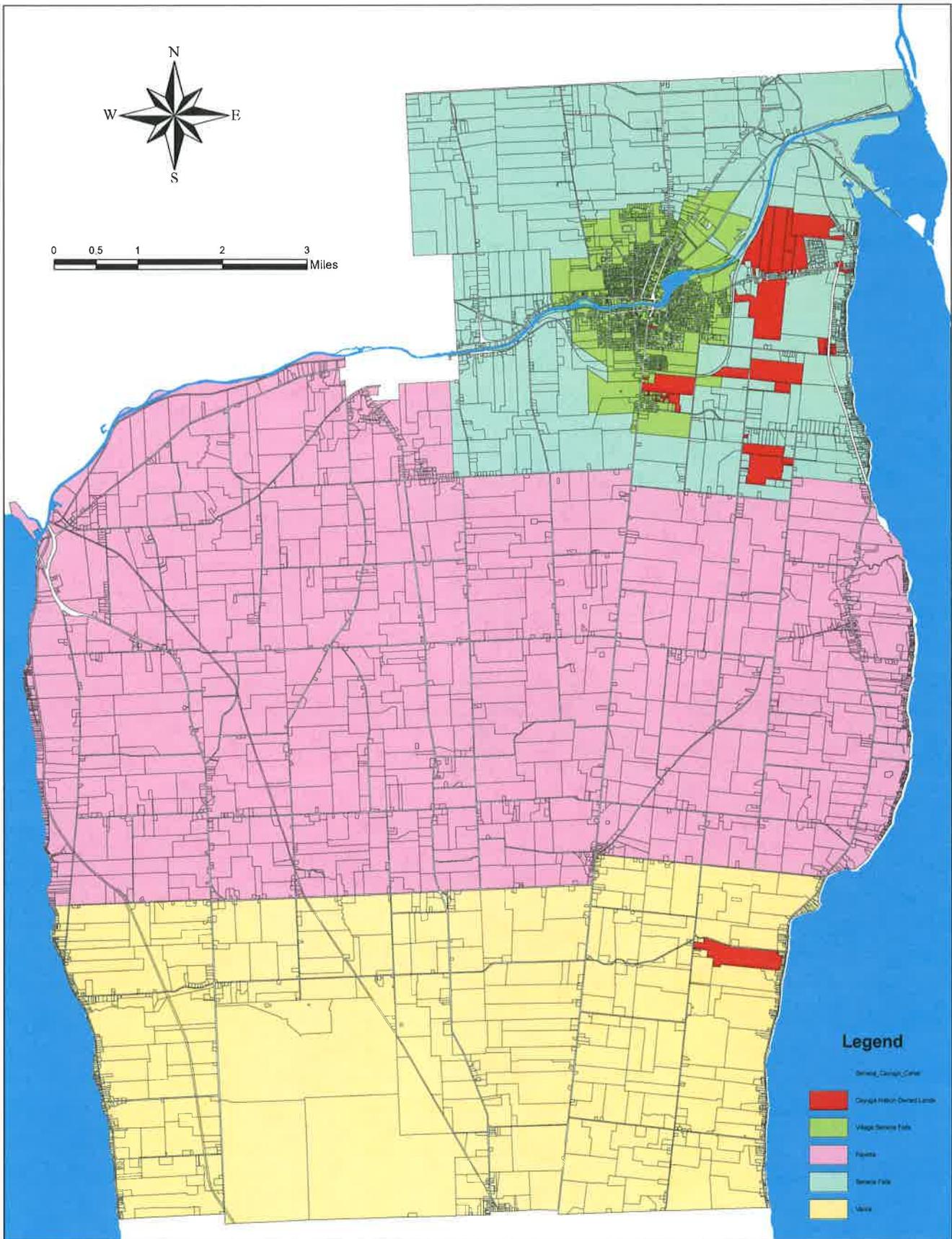
1 inch = 1,463 feet

Legend

-  Seneca_Cayuga_Canal
-  Cayuga Nation - Owned Lands
-  Village Seneca Falls
-  Seneca Falls



Cayuga Nation Lands in Seneca County as of December 7, 2010



#14
12/27/2010

Subject: Native American tribes seek trade ties with Turkey
From: Jajpl@aol.com
Date: Thu, 11 Nov 2010 11:15:12 -0500 (EST)
To: jajpl@aol.com

http://www.realclearworld.com/news/ap/international/2010/Nov/11/native_american_tribes_seek_trade_ties_with_turkey.html



November 11, 2010

Native American tribes seek trade ties with Turkey

Selcan Hacaoglu

Native American tribal leaders seeking trade ties with Turkish companies have offered them tax incentives to operate in their reservations in the United States, the organizer of the trip said Thursday.

Lincoln McCurdy, president of the Turkish Coalition of America which organized the trip, said Thursday that the Native American tribes belong to sovereign nations that can strike their own trade deals and offer special tax incentives.

The delegation, representing 17 tribes from at least 10 U.S. states, has been welcomed by the Turkish government, which wants to bolster trade ties with the United States, which is Turkey's seventh largest trading partner.

Turkey has been seeking preferential trade treatment from Washington. Two-way trade stands at \$11.8 billion.

Zafer Caglayan, the minister who oversees foreign trade, met the U.S. delegation in Istanbul earlier this week and discussed areas of possible cooperation in tourism and construction. Turkish constructors are active across the Middle East, Central Asia and Africa, building dams, stadiums and highways.

The delegation was scheduled to visit the Turkish Contractors Association in Ankara on Thursday.

"Ten years from now, I hope that we will be meeting as business partners, not just people pursuing business opportunities," Michael Finley, chairman of the Tribes of Colville Reservation in eastern Washington state, said after meeting the minister in Istanbul.

The delegation, including seven tribal leaders, chief executive officers of Native American

#14
12/27/2010

Tobacco and Terror:

How Cigarette Smuggling is Funding our Enemies Abroad



Source: New York State Department of Taxation and Finance

Prepared by the Republican Staff of the
U.S. House Committee on Homeland Security
U.S. Rep. Peter T. King (R-NY), Ranking Member

Tobacco and Terror Introduction

It has been well-reported that terrorist and criminal organizations are conducting illicit business operations within the United States, sending the profits overseas to finance domestic and international terrorist and criminal organizations. Recent law enforcement investigations have revealed that these profits, estimated to be in the millions of dollars annually in the United States alone, are generated in part by illicit cigarette trafficking.

Historically, the low-risk, high profitability of the illicit cigarette trade served as a gateway for traditional criminal traffickers to move into lucrative and dangerous criminal enterprises such as money laundering, arms dealing, and drug trafficking. Recent law enforcement investigations, however, have directly linked those involved in illicit tobacco trade to infamous terrorist organizations such as Hezbollah, Hamas, and al Qaeda.¹

These startling discoveries led U.S. House Committee on Homeland Security Ranking Member Peter T. King (R-NY) to launch an investigation of the issue. The following staff report—which will focus on the estimated millions of dollars in illicit tobacco profits being funneled to terrorist groups overseas as well as New York State’s refusal to enforce tobacco laws—is the result of numerous interviews with law enforcement officials at the local, State, and Federal level, as well as open-source research.

It is the hope of Ranking Member King that this report will shed light on a criminal enterprise that has been largely ignored for far too long.

¹ Staff interview with New York State Department of Taxation and Finance officials, New York City, December 2007.

JUNE
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1.25

ANYONE
IN
OFFICE
I AM
NOTING
THAT OUT
...SICK

Tobacco and Terror **The Illicit Tobacco Trade: Smuggler Operations**

Over the past several years, the illicit tobacco trade has reemerged as one of the most lucrative smuggling operations in the United States and around the globe. The World Health Organization has estimated that illicit cigarettes account for 10.7 percent, or approximately 600 billion cigarettes, of the more than 5.7 trillion cigarettes sold globally each year.² To put this into perspective, the global black market alone would supply 4.5 packs to each of the planet's 6.6 billion inhabitants annually. In North America, experts estimate that five percent of the annual cigarette market, or some 414 billion cigarettes, are illicit.³

Domestically, the opportunities for illegal profit are abundant, given the disparity between state taxes on cigarettes as well as the discounted sale of cigarettes to specific segments of the population, such as Native Americans. Since 1992, cigarette taxes in the United States have been on the rise, increasing more than 65 percent (while states' gross tax revenues increased by only 35 percent).⁴ Exploiting the price disparity for a single pack of cigarettes between individual states has proven lucrative for well-organized criminal networks. For example, a pack of cigarettes that costs \$8 in New York and New Jersey will only cost \$4 in "tobacco states" like Virginia and North Carolina. The profit on a standard diverted load of 1,500 contraband cartons could be as high as ~~★~~ \$60,000.⁵

In its operations, the contraband and counterfeit tobacco trade is very similar to other types of illicit activities. It occurs on all levels, ranging from large scale smuggling networks to smaller

² Framework Convention Alliance, "How big was the illicit tobacco problem in 2006?" Geneva, 2007.

³ Framework Convention Alliance, "Factsheet: February 2008." <http://www.fctc.org>.

⁴ Bartlett, Bruce. "Cigarette Smuggling," National Center for Policy Analysis, Brief Analysis N. 43, October 30, 2002.

⁵ Staff interview with New York State Department of Taxation and Finance officials, New York City, December 2007.

“bootleg” activities, as well as counterfeiting and illegal manufacturing.⁶ Large scale cigarette smuggling networks in New York State are dominated by tight-knit, nationality-based networks, primarily families through blood or marriage of Lebanese, Yemeni, Jordanian, and Palestinian descent.⁷ These family-based smuggling rings can control up to four of the key stages in the smuggling process: transportation, storage, retail, and remittance. Federal and New York State law enforcement officials estimate that nearly 60 percent of all convenience retail outlets in New York City are now Arab-owned, and with the Arab networks compartmentalized by ethnicity and familial ties, the risk of infiltration by law enforcement is minimal.

It is possible for these Arab networks to rely on suppliers in lower tax states such as Virginia and North Carolina as well as Hezbollah-linked front companies in various free trade zones around Latin America.⁸ However, sources told the Committee that in New York State the smuggling networks rely primarily on access to the Native American Indian reservations for tax-free cigarettes—for obvious financial reasons.⁹

According to law enforcement and the New York State Department of Taxation and Finance, cigarette manufacturers sell a carton of cigarettes to New York wholesalers for \$26. The Native American Indian reservation smoke shops can then purchase that same carton from the wholesalers for \$27. New York City retailers, on the other hand, are forced to pay an average of \$61.77 per carton of cigarettes, after the applicable \$18.60 state tax, \$15 local tax, and other fees. This is more than double the price paid by State-recognized Native American tribes.

This large disparity has created a tremendous opportunity for criminal enterprise. Smugglers can make arrangements with tribal smoke shop owners to purchase an average 1,500 carton load at

⁶ Joossens, L. “Combating the Illegal Tobacco Trade from a Public Health Perspective,” presentation at the World Health Organization expert Committee on the Illicit Tobacco Trade, Geneva, September 2006.

⁷ Staff interview with Federal and NY State law enforcement officers, New York City, December 2007.

⁸ Billingslea, William, Senior Intelligence Analyst, Bureau of Alcohol, Tobacco, Firearms, and Explosives. “Illicit Cigarette Trafficking and the Funding of Terrorism,” *The Police Chief*, vol. 71, no. 2, February 2004.

⁹ Staff interview with Federal and NY State law enforcement officers, New York City, December 2007.

\$30 per carton. The smugglers then add counterfeit tax stamps, which cost them as little as \$1 per carton.¹⁰ Once the counterfeit tax stamps are in place, the smugglers may then re-sell the cigarettes to their network retailers for approximately \$45 per carton, generating a \$14 profit per carton, or \$21,000 per load.

↘ The incentive for retailers to purchase cigarettes from these smugglers is obvious. In New York City, for example, retail outlets must sell a carton of cigarettes for a minimum of \$70,¹¹ generating a profit of no less than \$25 per carton on contraband cigarettes. On a load of 1,500 cartons, that's more than \$37,500. Many of these retail outlets are affiliated with the smuggling rings that supply them.

In total, law enforcement officials in New York State estimate that well-organized cigarette smuggling networks generate between \$200,000 - \$300,000 per week. A large percentage of the money is believed to be sent back to the Middle East, where it directly or indirectly finances groups such as Hezbollah, Hamas, and al Qaeda.¹²



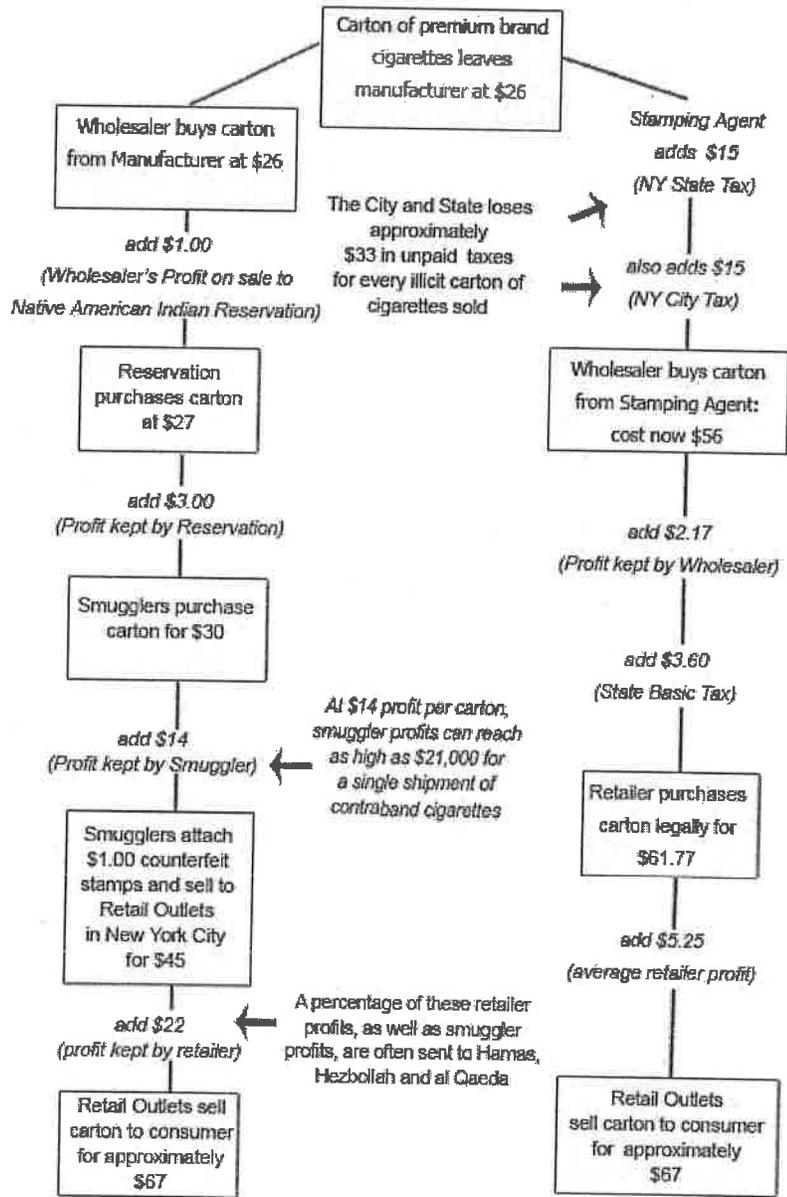
54,000 cartons of contraband cigarette seized in Queens, New York
by New York State Department of Taxation and Finance and Nassau County Police
Source: New York State Department of Taxation and Finance

¹⁰ Staff interview with New York State Department of Taxation and Finance agents, New York City, December 2007.

¹¹ Required by the New York State Cigarette Marketing Standards Act, N.Y. Tax L. §§ 483-484.

¹² Staff interviews with New York State Department of Taxation and Finance agents, New York City, December 2007 and Bureau of Alcohol, Tobacco, Firearms and Explosives, phone, April 2008.

Dissecting Cigarette Smuggling in NYC: Profits per Carton at each level of Operation



Tobacco and Terror **Recent Cases: Funding International Terror**

While law enforcement sources cannot divulge any information pertaining to ongoing investigations, several recently closed cases highlight the dangerous links between cigarette smugglers and international terrorist groups.

In Charlotte, North Carolina, a criminal enterprise led by Mohamad Hammoud smuggled cigarettes from North Carolina, where the tax was 50 cents per carton, to Michigan, where the state tax was \$7.50 per carton. Arrested in 2000 and convicted in 2002, Hammoud and his associates made more than \$8 million, a sum law enforcement officials estimate took a mere four years to accumulate. Officials believe more than \$100,000 of that profit was sent to Hezbollah.

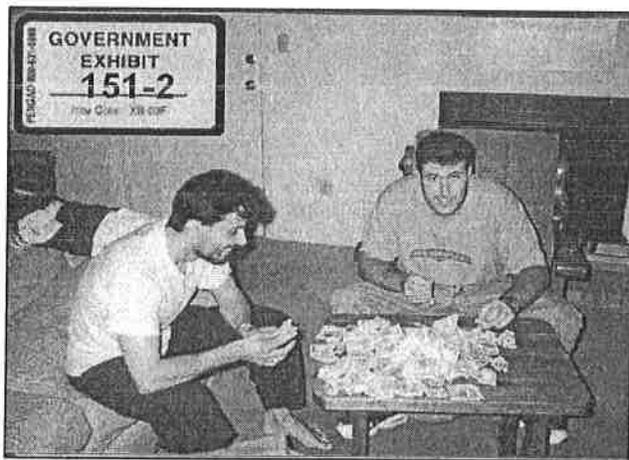
A case from 2003 involves two women from the Seneca Nation of Indians' Cattaraugus reservation (NY) who were sentenced for their role in a smuggling ring which provided tax-free cigarettes from the Seneca reservation smoke shop to another Hezbollah-linked network in Dearborn, Michigan. According to prosecutors, the head of the smuggling ring, Elias Mohamad Akhdar, is a native of Lebanon and has direct ties to Hezbollah.

In a third example, the infamous "Lackawanna Seven" reportedly received funding from an individual named Aref Ahmed for their travel from Buffalo to Afghanistan to attend an al Qaeda training camp.¹³ Ahmed was convicted in 2004 on charges of conspiracy to commit money laundering and smuggling contraband cigarettes.

While there are no direct ties to terror, the case of Rodney Morrison, co-owner of a Poospatuck tax-free smoke shop in Mastic, New York, is yet another example of the enormous profits from illicit cigarette sales and how they are being used to fund illegal and violent activities. Morrison was arrested on charges of ordering the "firebombing of a woman's car as part of a

¹³ Staff telephone interview with Bureau of Alcohol, Tobacco, Firearms, & Explosives, November 2007. See also http://www.usdoj.gov/opa/pr/2004/March/04_ag_141.htm.

campaign to intimidate owners of competing [tax-free] tobacco shops on the [Unkechaug Nation] reservation.”¹⁴ He was also under investigation for failing to report at least \$9 million in income deposited in banks in his native Costa Rica.¹⁵ According to New York State law enforcement officials, Morrison offered to put up a staggering \$54 million in assets just to secure his bond.¹⁶



Convicted smuggler Mohamad Hammoud

(Clockwise from left) Counting illicit tobacco profits; as a youth in Lebanon; and meeting with Hezbollah Leader Hassan Nasrallah

¹⁴ Reinholz, Mary. "In Brief; U.S. Charges Owner of Indian Smoke Shop," *New York Times*, August 15, 2004.

¹⁵ Ibid.

¹⁶ Staff telephone interview with New York State law enforcement officials, December 2007.

Tobacco and Terror New York State: A Safe Haven for Smugglers?

The illicit tobacco trade is a supply-driven process, fueled by tobacco manufacturers and wholesalers who control the distribution system. There is simply no incentive for industry to prevent illicit cigarette sales, as smuggling actually increases market share and boosts the industry's bottom line.¹⁷ A 2002 study by the National Center for Tobacco-Free Kids shows that as the price goes up, cigarette sales decline. For every 10 percent increase in the price of cigarettes, smoking decreases four percent among adults and seven percent among teens.

That would explain why manufacturers and distributors continue to flood New York's Native American Indian reservation smoke shops with more than 40 million cartons of cigarettes each year, far more than can actually be consumed by reservations themselves. A 1994 estimate shows that every man, woman, and child on a Native American reservation would have had to consume 15 packs of cigarettes per day to account for the volume of cigarettes that the distributors sold to the reservations.¹⁸ This, of course, is in direct contradiction with numerous Federal and State laws that maintain tax-free cigarettes are for reservation consumption only.

In essence, the New York State Executive Branch's decision to "look the other way" on sales of untaxed Native American cigarettes to non-Native Americans, the so-called "policy of forbearance,"¹⁹ has created a safe haven for illicit smuggling networks. The continuation of this policy allows criminal and terrorist elements to steal hundreds of millions of dollars a year in

¹⁷ Staff interview with New York State Department of Taxation and Finance agents; Bureau of Alcohol, Tobacco, Firearms, and Explosives agents; and federal interagency task force law enforcement agents, December 2007. See also http://tobaccofreecenter.org/smuggling_factsresources, "Illicit Trade: Questions and Answers."

¹⁸ *The City of New York v. Milheim Attea & Bros., Inc.*, Civil Action No. 06-CV 3620, Amended Complaint, Eastern District of New York, p. 7.

¹⁹ New York State's policy of forbearance as outlined in a letter from the Office of the Attorney General, State of New York, to U.S. District Court, Eastern District of New York regarding *City of New York v. Milhelm Attea & Bros., Inc., et al.*, 06 CV 3620 (CBA) dated September 24, 2007: Since the administration of Governor Pataki, the Department of Taxation and Finance has pursued what courts have referred to as a policy of non-enforcement, or forbearance, regarding collection of the excise taxes due on cigarettes sold on Indian reservations to non-tribal members.

untaxed cigarettes alone.²⁰ Furthermore, thanks to forbearance, New York Indian reservations are now the chief suppliers of a nationwide internet-based tax free cigarette market.²¹ So the policy of forbearance has not only impeded the New York State Department of Taxation and Finance from combating illicit trade within the State itself, it has actually promoted an illicit interstate market.

In a recent interview, a convicted tobacco smuggler turned confidential source for the State of New York explained the effect of forbearance:

Tobacco smugglers' only fear is losing a load of cigarettes. We do not fear law enforcement. They will pull us over, seize the load, and maybe we get arrested; but most likely we do not. Worst case scenario, we go to jail for a couple of months before returning to smuggling again. Think about it. A small fish like me can make \$50,000 a month working only a few hours each week. The big fish make hundreds of thousands a week, most of which goes to the Middle East in cash or trade transactions.²²

Obviously, there should be tremendous concern over who is diverting the funds, to whom, and for what overseas cause—and law enforcement on the local, State, and Federal level should place top priority on these investigations.

But on a lesser level, given the State's budget shortfall, the hundreds of millions in lost tax revenue should be motivation enough to abandon the policy of forbearance. A 2006 report by the New York State Department of Health estimated that between \$436 million and \$576 million in taxes were lost in New York State in 2004 from the sale of untaxed cigarettes alone.²³ But Albany simply maintains the status quo, despite the fact that these illicit profits are leaving the state and being sent overseas to Jordan²⁴ and Lebanon,²⁵ among other countries.

²⁰ Davis, K., Farrelly, M., Li, Q., & Hyland, A. "Cigarette Purchasing Patterns Among New York Smokers, Implications for Health, Price, and Revenue," for the New York State Department of Health, March 2006. http://www.health.state.ny.us/prevention/tobacco_Control/docs/cigarette_purchasing_patterns.pdf

²¹ Staff interview with New York State Department of Taxation and Finance agents, New York City, December 2007.

²² Staff interview with a New York State confidential informant, New York, December 2007.

²³ http://www.health.state.ny.us/prevention/tobacco_Control/docs/cigarette_purchasing_patterns.pdf.

²⁴ Khan, Daryl. "28 arrested in cigarette-smuggling operation," *New York Newsday*, September 2, 2005.

²⁵ Staff interview with a New York State confidential informant, New York, December 2007.

Ignoring the Law

Three cases decided by the U.S. Supreme Court have made it absolutely clear that cigarette sales by Native Americans to non-Native Americans fall within State taxation power:

- ***Moe v. Confederated Salish and Kootenai Tribes*** (1976): Upheld Montana law that required Native American retailers to collect a cigarette tax imposed on sales to non-Indian consumers.²⁶
- ***Washington v. Confederated Tribes of Colville Reservation*** (1980): Upheld a comprehensive Washington State statute requiring tribal retailers selling goods on the reservation to collect taxes on sales to nonmembers.²⁷
- ***Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*** (1991): Tribal sellers are required to collect and remit state taxes on sales to nonmembers at smoke-shops on reservation lands.²⁸

There are further Federal and State cases that support States' rights to tax cigarette sales by Native Americans to non-Native Americans. In *Narragansett Indian Tribe v. Rhode Island*, a Federal circuit court held that "the State's cigarette tax laws are applicable to sales to non-Indian customers on the settlement lands."²⁹ In *DeLoronde v. New York State Tax Commission*, a New York State court stated "it is readily apparent to us that [§471] can be applied [to Native Americans] in a constitutionally valid manner."³⁰ Contraband cigarettes sold in New York City also violate NYCRR § 76.1(a)(1) and Admin Code § 11-1302(g), which require a City tax stamp to be applied to each package of cigarettes to be sold in the City.

Furthermore, the U.S. Supreme Court has made it clear that States have the authority to tax wholesalers themselves on sales to Native Americans when the cigarettes are intended for re-sale to the public. "States may of course collect the sales tax from cigarette wholesalers, either by seizing unstamped cigarettes off the reservation, or by assessing wholesalers who supplied unstamped

²⁶ *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976).

²⁷ *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980).

²⁸ *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 512 (1991).

²⁹ *Narragansett Indian Tribe v. Rhode Island*, 407 F.3d 450 (1st Cir. 2005).

³⁰ *DeLoronde v. New York State Tax Commission*, 142 A.D.2d 90, 535 N.Y.S.2d 209 (3d Dep't 1988).

cigarettes to the tribal stores.”³¹ As mentioned earlier, wholesalers currently sell an estimated 40 million cartons of untaxed cigarettes annually to New York’s Native American Indian reservation smoke shops.

New York State’s refusal to collect taxes on these sales is also a clear violation of the State’s own laws. New York State already imposes and has the authority to enforce cigarette excise taxes by means of N.Y. Tax Law Sections 471 and 471-e. A New York court is on record stating that § 471-e “made it plain that all cigarettes sold on Indian reservations to non-members of the nation or tribe or to non-Indians shall be taxed and evidence of such tax will be by means of a fixed cigarette tax stamp.”³² Additionally, in that same court case, it was argued that if the [New York State] Taxation Department “revokes the policy of forbearance, then it and other stamping agencies will be legally obligated to affix stamps on cigarettes sold at wholesale – at wholesale to reservation sellers. It is not a question of about whether the state can or cannot do it. This concedes that the only thing that is inhibiting enforcement is the policy of forbearance.”³³

However, in the 14 years since the U.S. Supreme Court ruled that it was within the constitutional authority for the State of New York to tax cigarette sales by Native Americans to non-Native Americans, New York State has not collected these taxes. Instead, the State maintains its policy of forbearance. While no clear reason has been given, it is likely that Albany simply fears upsetting the State’s Native American population. Native Americans have openly expressed their disapproval of any efforts to collect these taxes, including the April 1997 protests that temporarily shut down the New York State Thruway.³⁴

³¹ *Citizen Band*, 498 U.S. at 514.

³² *The City of New York v. Milheim Attea & Bros., Inc.*, Civil Action No. 06-CV 3620, Oral Arguments, Eastern District of New York, p. 40.

³³ *The City of New York v. Milheim Attea & Bros., Inc.*, Civil Action No. 06-CV 3620, Oral Arguments, Eastern District of New York.

³⁴ O’Donnell, Michelle. “Tax on Sales at Indian Reservations Blocked,” *The New York Times*, November 16, 2004.

New York State is also doing a poor job of enforcing anti-smuggling laws. The Contraband Cigarette Trafficking Act makes it unlawful for any person to “knowingly ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.”³⁵ Contraband cigarettes are defined as “a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable state or local cigarette taxes in the state or locality where such cigarettes are found...”³⁶

In summary, New York’s failure to uphold federal laws, as well as the State’s own laws, has resulted in an environment where cigarette smuggling rings can operate with virtual impunity. Given the revelation that some of these rings are now funneling money to international terror groups, it is clear that the policy of forbearance not only costs the State hundreds of millions in tax dollars but is a threat to our continued security.

³⁵ 18 U.S.C. 2342.

³⁶ Ibid.

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New York Post, Saturday, April 12, 2008

Tobacco and Terror Conclusion

Experts have long acknowledged that terrorist organizations such as Hezbollah “depend on a wide variety of criminal enterprises, ranging from smuggling to fraud to drug trade to diamond trade in regions across the world,”³⁷ including the United States. Terrorist organizations rely heavily on their global web of illicit enterprises to financially support their recruiting, training, arming, and operational objectives. As law enforcement agencies continue to combat terrorist and criminal fundraising schemes, these criminal groups will continue to adapt and exploit emerging vulnerabilities. The ability of these groups to engage in low-risk, cash-based schemes such as cigarette smuggling are critical to the continuation of their operations. The more than \$50,000 in profits that smuggling rings can generate from one contraband load (1,500 cartons) is enough to fund as many as 10 USS Cole bombing operations. In just two months of illicit cigarette trade operations, a motivated terrorist cell could generate sufficient funds to carry out another September 11th style attack, in which operational costs were estimated to be \$500,000.³⁸

Law enforcement agencies face a daunting task of keeping up with these ever-changing criminal schemes. Simply put, they need more help from State and Federal governments. The last few years have seen a boom in cigarette smuggling around the world and here in the United States; and, thanks to its policy of forbearance, New York State is doing more to facilitate this trade than any other State in the union. On June 3, 2008, New York State taxes on cigarettes are set to increase by another \$12.50 per carton. This will only serve to increase the demand for illicitly smuggled cigarettes and inflate the profit margin of these smuggling networks.

This must be brought to an end. It is more than just a matter of hundreds of millions in lost tax revenue—it is a matter of national security.

³⁷ Testimony of Dr. Matthew Levitt, Senior Fellow and Director of Terrorism Studies, The Washington Institute for Near East Policy, before the Senate Committee on Homeland Security and Governmental Affairs, May 25, 2005.

³⁸ Brisard, Jean-Charles. “Terrorism Financing,” Report prepared for the President of the Security Council, United Nations, New York, December 19, 2002, p. 6.