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HEADLINE: Pataki eyes reservation tax issues

BYLINE: JAMES M. ODATO; Capitol bureau

HIGHLIGHT:

Albany In light of taxation situation's volatility, the governor is trying to craft alternative legislative solutions

BODY:

In an effort to avoid a confrontation within Indian tribes, the Pataki administration is trying alternative ways of resolving sales-tax issues, an assistant attorney general said Thursday.

In a four-year-old case, the National Association of Convenience Stores and the New York Association of Convenience Stores is seeking an order from the Appellate Division of state Supreme Court to force the state tax department to require Indian stores to pay taxes from cigarette and gasoline sales.

The stores don't charge customers taxes although the state requires all other merchants to collect tax on tobacco and gasoline products.

The state has the authority to require tax collections at Native American stores for sales to any non-Indians. But the sovereignty of Indian nations and civil discord that has resulted when the state tries to get tax revenues complicate the matter, suggested Andrew D. Bing, assistant solicitor general.

"The state has no ability to take action on reservations. We don't have police power with respect to tax laws," he said.

David M. Cherubin, a lawyer for the convenience stores, argued that the Pataki administration has usurped the power of the Legislature by allowing the tax department to permanently change tax laws. The lack of enforcement has caused tax-paying retailers "egregious harm," Cherubin said, and the situation has grown worse since the cigarette tax was raised March 1 from 56 cents to a national high of \$ 1.11 per pack.

"Now Indian retailers are using the Internet and aggressively marketing discount cigarettes," Bing said. The Oneida Indians in central New York also have a number of off-reservation stores, Bing said, that are charging the lower prices.

Conservative state estimates peg the state's lost revenues at about \$ 100 million annually.

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Gov. George Pataki is attempting to negotiate solutions in settlement talks with tribes that have land-claim cases pending against the state, Bing said.

Pataki is also urging the Legislature to pass bills banning Internet, telephone, or mail-order sales of cigarettes to anyone except registered retail or wholesale dealers in order to curb bootlegging. He vetoed a self-extinguishing cigarette bill recently in part because he wanted the bootlegging and Internet sales legislation approved as well.

Legislative sources say negotiations could resolve that matter by next week.

Pataki also seeks laws that would set up a franchise and income tax credit for businesses that sell cigarettes and tobacco products near reservations while specifically exempting reservation cigarette and motor fuels sales from taxes. And, he wants the right to enter into tax compacts with tribes.

The taxation issue is extremely volatile within reservations. In 1997, some Indian nations agreed to a deal with the state on minimum pricing of cigarettes at reservation stores and ending gasoline sales at a number of outlets. The Seneca Nation in western New York and the St. Regis Mohawk Tribe, at the Canadian border, did not enter into any agreements but were going to be subjected to enforcement of regulations.

The governor tried blocking delivery and seizing untaxed cigarettes, but the enforcement attempts resulted in demonstrations, confrontations with state police, tire-burnings and threats of violence by Indian groups. One death has been attributed to those disturbances. Pataki abandoned implementation of the agreements.

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