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OFFICE OF THE ATTORNEY GENERAL
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ATTORNEY GENERAL

RECEIVED

JUN 27 2006

DENISE KEANE



E-MAILED

Joe/Tony/Gaye

DIVISION OF
PUBLIC ADVOCACY

June 28, 2006

BY EXPRESS MAIL

Denise Keane, Esq.
Philip Morris USA Inc.
6601 West Broad Street
Richmond, VA 23230

Dear Ms. Keane:

I write to raise with you a matter of significant concern to the Office of the New York Attorney General ("NYAG"): the sale of cigarettes by manufacturers to wholesalers who openly resell those cigarettes in New York State without affixing the appropriate tax stamp, in clear violation of New York law.

As you are aware, New York Law criminalizes any willful attempts to evade or defeat the cigarette taxes it imposes, as well as the aiding and abetting of such an attempt. N.Y. Tax Law § 1814; N.Y. Penal Law § 20.00. To enforce those taxes – and deter smoking – New York requires wholesalers who act as stamping agents to affix tax stamps to all cigarettes sold in New York, unless an exemption applies. See N.Y. Tax Law §§ 471 and 473. No such exemption applies to sales to Indian tribes who resell those cigarettes to those who are not members of the same reservation. See, e.g., *Dep't of Taxation and Finance of New York v. Milhelm Attea & Bros.*, 512 U.S. 61 (1994).

On March 1, 2006, New York Tax Law § 471-e went into effect. That statute explicitly bars all sales of unstamped cigarettes to Indian reservations, and allows Indian retailers to engage in tax exempt sales only to other members of the same reservation, on terms specified in the law. As the New York Attorney General ("NYAG") has stated, this statute is the governing law in New York State, and is in full force and effect. In addition, virtually all Indian retailers are unlicensed, and therefore all shipments of over 10,000 unstamped cigarettes by wholesalers to these retailers (and the possession of those cigarettes by the retailers) violate the federal Contraband Cigarette Trafficking Act. See 18 U.S.C. § 2341 *et seq.*

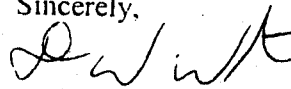
This office, along with other law enforcement agencies, has been engaged in an investigation aimed at curtailing the illegal sale of unstamped cigarettes, and of cigarettes sold by remote means. As part of that investigation, the NYAG has reviewed compliance with the statutes cited above, in an effort to determine how these statutes can best be enforced, and how sales of unstamped cigarettes and cigarettes sold through remote means can best be restricted. The investigation has led to a series of agreements with manufacturers, wholesalers, couriers and credit card companies, including agreements with two wholesalers which have agreed to fully comply with § 471-e. This investigation, and this office's review of the options available to achieve the ends set forth above, is ongoing.

In the course of the NYAG's investigation, it has come to this office's attention that several cigarette wholesalers in New York State continue to sell cigarettes you manufacture without appropriate tax stamps, in direct violation of the laws cited above. The agents who continue to sell substantial quantities of unstamped cigarettes in violation of state and federal law are: Milhelm Attea & Brothers, Inc., Frank Colucci, Inc., Gutlove & Shirvint, Jacob Kern & Sons, Mauro Pennisi, Inc., Day Wholesale, Inc. and Capital Candy, Inc. We believe that many manufacturers are aware of the legal violations of these agents, and continue to supply them with cigarettes.

By this letter, we are putting you on notice of this conduct, and asking for your cooperation in ending it. Please indicate to us, by July 10, 2006, what steps you intend to take so this office may determine how best to proceed at that time.

We would welcome the opportunity to discuss this with you further. If you have any questions, or wish to talk about any issue raised in this letter, please feel free to contact me at (518) 486-9730.

Sincerely,



David Weinstein

As you probably are aware, the New York State Legislature recently enacted legislation expressly prohibiting tobacco product manufacturers from selling unstamped cigarettes to any stamping agents that have unlawfully re-sold those cigarettes in violation of the Tax Law during the past year. However, that legislation has not yet been acted on by the Governor, and so we are not relying upon that provision at this time. If the bill is signed, it obviously would provide yet another legal basis for taking action.