



THE SENECA NATION OF INDIANS

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TESTIMONY OF MAURICE A. JOHN, SR., PRESIDENT OF THE SENECA NATION OF INDIANS

before the

SUBCOMMITTEE ON OVERSIGHT

of the

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS & MEANS**

**OVERSIGHT HEARING ON THE ALCOHOL, TOBACCO TAX, AND TRADE BUREAU
OF THE U.S. DEPARTMENT OF THE TREASURY**

May 20, 2008

INTRODUCTION

Mr. Chairman and members of the Committee, I submit this written testimony on behalf of the Seneca Nation of Indians and ask that it be included in the record of this hearing.

The Seneca Nation of Indians ("Nation") is recognized by the United States and the State of New York as a sovereign tribal government. The Nation is a signatory to numerous treaties and agreements with the United States which govern the relations between the Nation, the United States, and the State of New York, including matters regarding commerce and taxation. These treaties and agreements have their origins in deals under which vast land holdings were transferred out of Seneca Nation control in exchange for express security and protection guarantees by the United States for the remaining Nation lands.

SENECA NATION'S TERRITORIES ARE IMMUNE FROM STATE TAXATION

The Seneca Nation, our people and our lands, have been immune from State taxation since the United States was formed. Agreement after agreement has reiterated this tax immunity and our Nation's inherent, sovereign right to regulate conduct within our Territories. It is most notably protected by the United States through the Treaty of Canandaigua of 1794, 7 Stat. 44. This federal obligation -- to protect the immunity of the Seneca Nation and its Territories from the reach of taxation by the State of New York -- and to protect our inherent, sovereign right to regulate conduct within our Territories -- should be the focus of this Subcommittee.

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SENECA NATION ENFORCES THE LAW

The Seneca Nation enforces a comprehensive Import-Export Law it enacted in 2006 to regulate sales of tobacco and other products on its Territories. The Nation established its own Import-Export Commission which regulates all aspects of tobacco and other product sales. Among other functions, the Commission –

- Prevents the importation of tobacco products into Nation Territories only by licensed stamping agents;
- Prevents the sale of tobacco products without the affixation of a Nation import stamp and payment of the required import fee;
- Defines unstamped cigarettes as contraband;
- Requires accurate accounting of all stamps issued to Nation authorized stamping agents;
- Prohibits cigarette sales in excess of 9,800 cigarettes (lower than the Federal threshold);
- Imposes severe penalties, including loss of business license, for trafficking in contraband cigarettes; and
- Prevents the sale of tobacco products to minors under age 18.

As a result of the enactment and enforcement of its own tribal law, the Nation has gained regulatory control of tobacco and other sales activities on its Territories.

SENECA NATION COOPERATES WITH THE BATFE & ATTTB

The Nation's aggressive implementation of its Import-Export law has greatly enhanced its capacity to cooperate with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) and the federal Alcohol, Tobacco Tax, and Trade Bureau (ATTTB) in enforcing federal law on the Nation's Territories.

Within the past year, the Nation has successfully conducted three major investigations that have resulted in large-scale seizures of contraband cigarettes, two of which had the full support and involvement of the BATFE.

In July 2007, the Nation raided a smoke shop suspected of trafficking in unstamped cigarettes that resulted in the seizure of approximately 65,000 cartons of unstamped product. The

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retailer forfeited a portion of the shipment, had its tobacco retailer license suspended, and paid a six-figure civil assessment and administrative fee to the Nation. The Nation also banished two non-Indians from doing business on the Nation's Territories for a period of two years.

One of the joint Nation-BATFE investigations involved action against non-Indian residents of the City of Salamanca who were illegally selling tobacco and motor fuel without collecting state taxes. The Nation, BATFE and the U.S. Postal Service worked cooperatively to issue the appropriate warrants and collection of evidence for further criminal proceedings.

Another joint Nation-BATFE investigation involved an undercover operation and led to the arrest of a Long Island-based New York State stamping agent who was illegally diverting cigarettes to an unlicensed retailer in violation of both Nation and Federal laws. The Nation imposed a six figure fine on the stamping agent and permanently banned the non-Indians from the Nation's Territory.

Since these investigations have concluded, we can discuss them. There are other ongoing investigations about which it would be counterproductive to discuss. Please be assured that as a government with law enforcement responsibilities for our Territories, the Seneca Nation of Indians is committed to cooperation with federal authorities in the implementation of federal and tribal law.

We have reason to believe that the foregoing investigations are among the largest tobacco enforcement actions taken by any regulatory agency within the past year. They have occurred as a result of the Nation's leadership, not despite it.

As a direct result of our Nation's enforcement of Nation law, the federal government receives federal excise tax revenue on all tobacco products sold on the Nation's Territories. Our Import-Export Commission is an ally, not the enemy, of the ATTTB and its mission to collect federal excise taxes on tobacco sales. We regret that Administrator Manfreda, in his oral testimony, stated generally that Indian reservations are not in compliance with federal excise tax requirements. While there may be other Indian nations in New York where the ATTTB has challenges with excise tax enforcement, the Seneca Nation is not one of them. If given the opportunity to revise and extend his remarks, we are confident that Administrator Manfreda would clarify his oral statement to reference the extensive cooperation the United States has enjoyed with the Seneca Nation's Import-Export Commission.

SENECA NATION CONTROLS TOBACCO SALES WITH A HIGH-TECH DIGITAL STAMP SYSTEM

The Seneca Nation has acquired the latest stamp and tracking technology that exceeds the systems in place in all other states other than California. We now have the ability to track all tobacco packages with a fool-proof stamp and electronic inventory infrastructure that can tell us the origin, tax, and other information on each product sold on our Territories.

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We understand that Representative Nunez identified in his remarks at this hearing some challenges encountered by California in implementing similar technology but our use of this digital stamp system has been a success. We would be pleased to provide this Subcommittee with information on our experience with it.

SENECA NATION IS CONCERNED BY MIS-GUIDED REMARKS AT THIS HEARING

We are concerned by a few of the remarks of various Members and witnesses at this hearing. In particular, we vigorously dispute any reliance by this Subcommittee or its witnesses on the wildly inaccurate Judiciary Committee staff report issued several weeks ago by Representative Peter King, entitled *Tobacco and Terror: How Cigarette Smuggling is Funding our Enemies Abroad*.

That staff report charges that the Seneca Nation is complicit in the illegal trafficking of tobacco and somehow obstructs the collection and remittance of lawful tobacco taxes. That staff report is without basis in fact or law. The Nation is, in fact, a leading player on the national stage with respect to eliminating illegal tobacco trafficking activity, and has likely done more to curtail contraband trafficking in the past year than any State agency, including that of New York State.

The *Tobacco and Terror* staff report focuses extensively on Arab ties to contraband cigarette trafficking and asserts that the "smuggling networks rely primarily on access to Native American Indian Reservations for tax free cigarettes - for obvious reasons." Rather than cite repeated criminal proceedings to support this allegation, the Tobacco and Terror report simply cites an interview with unidentified federal and state law enforcement officers. Federal law enforcement officials tell a different story. At the Federal Tax Administrators Conference held in Madison, WI on August 26, 2007, it was reported that three recent contraband trafficking investigations all involved trafficking from low-tax states (such as South Carolina) to high tax states (such as New York). None involved trafficking from Indian nations generally and none involved the Seneca Nation.

There is no documented evidence that tobacco sales occurring on Indian lands support terrorism except for a single instance that occurred eight (8) years ago when two female members of the Seneca Nation sold cigarettes to some Arabs in Michigan who were later found to have links to a terrorist organization in the Middle East. These two women were prosecuted by the United States and punished for their involvement in selling the cigarettes involved in the scheme.

To malign the entire Seneca Nation for the actions of two of its members is preposterous. This is no more fair than it would be for Representative King to malign the entire State of New York government for the actions of these same two women, or to impugn the integrity of the

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government of the State of Michigan because some of its Arab residents funneled sales proceeds to a terrorist organization overseas.

The inflammatory and unsupported allegations in the *Tobacco and Terror* report undermines public understanding of the Seneca Nation, its people, and its regulatory control over tobacco. It is painfully obvious to us that what is behind the *Tobacco and Terror* report is a transparent attempt by certain elements within New York State to hitch their self-serving cause to the fervor of a national anti-terrorism campaign.

Why would a Committee of the U.S. Congress be concerned about the collection of New York state excise taxes? No such taxes are lawfully owed on the Nation's Territories. This misplaced concern betrays a fundamental misunderstanding of federal Indian law and policy, as well as the treaties between the United States and the Seneca Nation.

CONCLUSION

The Seneca Nation asks that this Subcommittee honor our treaties and protect our inherent, sovereign right to regulate conduct on our Territories, including our immunity from State taxation. We also ask that this Subcommittee gather accurate, relevant, and reliable information regarding the Seneca Nation's regulation of tobacco sales taking place in our Territories.

Thank you for this opportunity to provide testimony and we ask that it be made part of the record of this hearing.

**Oversight Hearing on the Alcohol, Tobacco Tax, and
Trade Bureau of the U.S. Department of the Treasury
May 20, 2008**

Statement on behalf of:

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Witness List

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