

EXHIBIT D

Seneca Nation of Indians

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PRESIDENT'S OFFICE

August 17, 2010

VIA MAIL AND EMAIL

Hon. David Paterson
Governor of the State of New York
Executive Chamber
The Capitol
Albany, NY 12224

Hon. Andrew Cuomo
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Re: *Litigation Regarding New York Tobacco Laws*

Greetings Governor Paterson and Attorney General Cuomo:

Attached please find a copy of the Complaint the Seneca Nation filed today in the United States District Court for the Western District of New York challenging as substantively infirm (1) the amendments to Tax Law sections 471 and 471-e that were enacted on June 21, 2010; and (2) the emergency regulations promulgated by the Department of Taxation and Finance in an effort to implement those statutory provisions.

As the Nation's Complaint details, we believe that the new legislative and regulatory provisions violate well-established federal law in several fundamental respects. However, the point of this letter is not to convince you of the merits of the Nation's arguments. Rather, it is to suggest an orderly process by which the State and the Nation might seek to have the federal district court, as well as the state courts, address our dispute with the State's efforts impose its taxes in our territory.

The Nation intends to file with the federal court a motion for a preliminary injunction and/or a temporary restraining order against enforcement of the new law and regulations this Friday, August 20, and to ask the Court to hear the motion by Friday, August 27th. The highly truncated manner in which the new legislation was enacted and the new regulations promulgated, and the very short timeframe prior to the September 1, 2010 effective date of those provisions, has necessitated that the Nation ask the Court for relief in such prompt fashion.

In addition to the federal court action, the Nation will seek to intervene in *Day Wholesale et al v. State of New York et al*, Index No. 07668/2006, pending in Erie County Supreme Court, for the sole purpose of challenging the procedural infirmity of the new "emergency" regulations

Hon. David Paterson
Hon. Andrew Cuomo
August 17, 2010
Page 2 of 3


under the State Administrative Procedure Act. The basis for this challenge is fully set forth in the Nation's pre-suit Petition filed with the New York Department of State on July 30, 2010. In the *Day Wholesale* case, the Department of Taxation and Finance has acknowledged that injunctions in place in that matter presently constrain it from enforcing the provisions of the State's tobacco tax laws on the Territories of the Indian Nations located in the State. The State is seeking to have the Court lift the injunctions; the Nation will ask the Court to keep them in place given the procedural invalidity of the new State regulations.

While this flurry of court activity may be unavoidable, the Nation would propose instead the establishment of an orderly court process to avoid confusion and conflict on September 1. If the State can provide the Nation with specific assurance by Thursday, August 19th that neither the Governor's Office, the Attorney General's Office, the Department of Taxation and Finance, or any relevant law enforcement agencies will seek to enforce the new law and regulations as of September 1, 2010, the Nation is willing to establish a briefing schedule in both court actions that would still ask the courts to hear preliminary injunction motions in a matter of weeks (we would propose late September), but that would also allow both the State and the Nation to develop their arguments for the courts in a more deliberate fashion. Moreover, under this approach, the State and the Nation would not burden the courts with the need to arrive at decisions before September 1. Consideration for the courts and the many demands on their dockets, and the mutual interest of the State and the Nation in having the courts arrive at proper decisions in matters of this significance, counsel strongly in favor of our proposal. If such an understanding can be reached, both the federal and the state court could be asked to enter stipulated Orders embodying its terms.

Our suggestion is consistent with our respective roles as sovereign governments who have a mutual responsibility to respect each others' interests and to ensure the peace and welfare of our peoples. While the State and the Nation have a fundamental disagreement regarding the validity of the new law and regulations, we have a joint interest in ensuring that the disagreement is worked out in a responsible manner. If the State seeks to enforce the new law and regulations on September 1, without the courts having had an adequate opportunity to address those provisions, and with so many important implementation issues left unaddressed, the result will be chaos and conflict. We have a joint obligation to avoid such an outcome.

If you have any questions regarding this suggested course of action, please have your office communicate with General Counsel Chris Karns at 716-945-1790 or chris.karns@sni.org. Again, if we do not hear from you by Thursday, August 19th, we will need to file our preliminary injunction motion the following day.

Sincerely,


Barry E. Snyder, Sr.
President

Hon. David Paterson
Hon. Andrew Cuomo
August 17, 2010
Page 3 of 3

cc: President Barack Obama
Hon. Charles Schumer
Hon. Kristen Gillibrand
Hon. Brian Higgins
Hon. Louise Slaughter
Hon. Christopher Lee
Hon. Kenneth Salazar
Hon. Eric H. Holder, Jr.
Hon. William J. Hochul, Jr.
Seneca Nation Council