

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

DAY WHOLESALE, INC. and SCOTT B. MAYBEE

Plaintiffs.

v.

THE STATE OF NEW YORK, ANDREW M. CUOMO, as
Attorney General of the State of New York, ROBERT L.
MEGNA, as Commissioner of the New York State
Department of Taxation and Finance. ELIOT SPITZER,
as former Attorney General of the State of New York,
and DAVID WEINSTEIN, as former Assistant Attorney
General of the State of New York,

Defendants

Index No. 07668/2006

AFFIRMATION
OF
JAMIE WOODWARD

JAMIE WOODWARD, an attorney admitted to practice in the courts of New York State, hereby affirms under penalties of perjury that the following is true:

1. Since June 2009, I have served as the Acting Commissioner of the State Department of Taxation and Finance (the Department). Before that, I served as Executive Deputy Commissioner. I have been employed by the Department for almost thirty years, much of that in various managerial positions.
2. I am familiar with the history of the Department's efforts to ensure that tax is collected on all taxable sales of cigarettes. I am also familiar with the provisions of the Tax Law, departmental regulations, published guidance, and policies that underlie and explain these efforts.
3. I make this affirmation in support of defendants' motion to vacate the orders of this Court dated and entered February 20, 2007 and January 27, 2009. These orders grant plaintiffs' motions for a preliminary injunction and enjoin the defendants from enforcing the provisions of Tax Law section 471-e or otherwise restricting sales of unstamped cigarettes to or by reservation cigarette sellers until the Department has adopted rules and regulations to implement the "Indian tax exemption coupon system" envisioned by section 471-e and distributed Indian tax exemption coupons to the governing bodies of Indian nations and tribes within the State.
4. Statutory, administrative and regulatory developments since issuance of these preliminary injunctions obviate the terms of the injunctions. As I will explain, the Department has satisfied the conditions imposed by this Court in the injunction. The rules and regulations implementing the coupon system have been adopted, and, pursuant to those rules, coupons will be issued to all nations and tribes electing to use them no later than September 1, 2010. Consequently, defendants' motion should be granted.

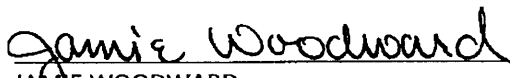
5. On February 23, 2010, the Department administratively revoked Advisory Opinion TSB-A-06(2)M. That opinion (Exhibit O to this affirmation) stated that if the Department decided to change its policy of allowing agents to sell untaxed cigarettes without restriction to recognized Indian Nations and reservation-based retailers (the policy of forbearance), it would provide notice to that effect. The revocation (Exhibit P) provided such notification. However, the injunctions prevent the Department from enforcing the Tax Law as it relates to sales by stamping agents to reservation sellers and to reservation sales at retail to non-Indians.
6. On June 21, 2010, the Legislature enacted legislation (Exhibit Q) modifying the coupon system by authorizing a dual system – an optional coupon system for Indian nation or tribes and the default system of pre-approval of amounts of tax free cigarettes allowed for sale to the Indian nation or tribes. The law was enacted on June 21, 2010 and is applicable to quarters beginning September 1, 2010.
7. On June 22, 2010, I adopted an emergency rule providing regulations to supplement the terms of the statute. This rule became effective that day upon filing with the Department of State. Under section 202(6) of the State Administrative Procedure Act, the emergency rule is effective for 90 days, until September 19, 2010. I intend to propose the rule as a permanent rule. I also intend to readopt the emergency rule to extend it another sixty days, in order to ensure that it remains in effect until the proposed rule can be adopted as a permanent rule.
8. The rule adds new NYCRR section 74.6 (Exhibit R), Taxes Imposed on Qualified Reservations, detailing the dual statutory system to provide an adequate quantity of tax free cigarettes to Indian reservations, as well as detailing the agent certification system. It is designed to ensure that adequate quantities of stamped tax-exempt cigarettes will be available to Indian nations or tribes for their use and use by their members in quantities based on their probable demand. The rule details how the two systems will operate. It sets forth the annual schedule according to which an Indian nation or tribe can seek reconsideration of its probable demand figure prior to its applicability and opt to participate in the Indian tax exemption coupon system. It establishes specific methods and procedures that the Department will use to calculate probable demand under both the coupon and prior-approval systems.
9. This rule allows an Indian nation or tribe that believes that the probable demand calculated by the Department for a given year is inaccurate to contact the Department explaining why it believes the calculation is inaccurate. The Department will consider any evidence submitted by July 31 in determining the probable demand for the ensuing twelve-month period beginning September 1.
10. This rule also gives Indian nations and tribes until August 15 each year to elect to participate in the Indian tax exemption coupon system. This election is made for the twelve-month period beginning September 1 and ending August 31.
11. The rule also establishes that the Department will provide Indian tax exemption coupons on a quarterly basis to the recognized governing body of any Indian nation or tribe located in New York that elects to participate in the Indian tax exemption coupon system. Coupons will be provided in advance of the quarters beginning each year on September 1, December 1, March 1, and June 1.
12. The Legislature directed that the Department begin collecting the taxes on taxable reservation cigarette sales on September 1, 2010 (*see* Exhibit Q). In order to meet this statutory deadline,

the Department must begin to implement the collection procedures described in this affidavit before September 1, 2010.

13. Indian tax exemption coupons will be provided by the Department after August 15, 2010 and before September 1, 2010 to any recognized governing body of any Indian nation or tribe making the election to participate in the Indian tax exemption coupon system. A sample Indian tax exemption coupon is included as Exhibit S.
14. To provide further guidance on the implementation of Part D and the emergency regulations, the Department today issued (Exhibit T) a technical memorandum (TSB-M) on the Indian tax exemption coupon and prior approval systems. A TSB-M is an informational statement explaining existing Department policies and/or outlining changes in the law, regulations, or Department policies. Each Indian nation or tribe, cigarette manufacturers, agents and wholesalers will be sent the TSB-M, which will also appear on the Department's web site.
15. In addition, the Department today issued a TSB-M on the agent certification procedures (Exhibit U). The Department also issued today the agent certification form and instructions (Exhibit V). Each cigarette manufacturer and agent will be sent the TSB-M as well as the certification form and instructions.
16. The Department intends for the Indian tax exemption coupon and prior approval systems to be implemented and operational as of September 1, 2010.
17. The Department has taken all actions necessary to satisfy current law and this Court.
18. Additionally, the State financial plan is anticipating that \$110 million will be collected under Tax Law sections 471 and 471-e during the current fiscal year (SFY 2010-11). The majority of this revenue (75%) is dedicated revenue that supports important health care programs that benefit all residents of the state. These revenues are put at risk if the injunctions are not vacated.

WHEREFORE, This Court should grant defendants' motions and vacate both of the preliminary injunctions in order to allow the Department to enforce the law.

DATED: August 5, 2010
Albany, New York


JAMIE WOODWARD
Acting Commissioner
NYS Department of Taxation and Finance
WA Harriman Campus
Building 9, Room 217
Albany, New York 12227
(518) 457-7358