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Senecas, NYS resume smoke tax fight

Business First of Buffalo - by [James Fink](#)

The **Seneca Nation of Indians** has collected slightly more than \$45 million in fees related to tobacco sales since 2006, with the bulk of that money going to underwrite health and education programs on its reservations and for tribal members.

The fees come from surcharges connected with the Indian nation-generated tax stamps placed on "imported" cigarettes and other tobacco products. Locally made cigarettes — produced from one of three area manufacturing plants owned by private citizens who are members of the Seneca Nation — are exempt from state tax collections.

The issue of fee collection proved to be one of the central points during more than two hours of testimony given Tuesday morning by Robert Porter, Seneca Nation senior policy advisor before U.S. Federal Court Judge Richard Arcara.

Porter is the first of seven witnesses the Seneca Nation and New York state are expected to call during the next few days. The two sides are continuing their complex legal battle over whether New York has the right to collect \$4.35 per pack in new taxes for cigarettes sold on Seneca Nation sovereign territory to non-Native Americans. New York state has tried to collect the surcharge since Sept. 1 but has been rebuffed by Seneca Nation legal efforts including a temporary restraining order Arcara put into place two weeks ago.

"What we collect allows for the benefit of Senecas who may not be in the cigarette business," Porter said.

For the most part, Seneca retailers respect and honor their own surcharge, which was put into place in 2006. Violation fees peaked at \$518,000 in 2006 and dropped to virtually nothing last year.

"The law works," Porter said.

Porter said the Seneca Nation has a good working relationship with federal officials when it comes to cigarettes and tobacco sales. Relations with New York state are more strained. In 1997, then-Gov. George Pataki attempted to collect sales taxes on cigarettes sold on sovereign territory and was met with a violent reaction.

Gov. David Paterson hopes to collect \$110 million from the just-imposed Indian cigarette sales taxes.

Under questioning from Robert Siegfried, assistant New York state attorney, Porter said he believes the Seneca Nation is protected by treaties negotiated with the federal government that supersede state law.

"American law recognizes Seneca Nation sovereignty," Porter said.

It is expected Arcara may review all the testimony before deciding on the issue.

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