

# **EXHIBIT 4**

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Justice for Native First People LLC - Cayuga Nation  
317 Cliffside Dr.  
Auburn, NY 13021

Re: Opinion Letter on Sale of Tobacco on Indian Lands

Greetings:

You have asked me to express an opinion regarding the legality of the sale of cigarette products tax free within the confines of the Cayuga Nation's Reservation within New York State. I can confidently state that a member of the Cayuga Tribe selling tobacco products within the boundaries of the 65,000 acre Reservation of the Cayuga Nation, as recognized in The Canandaigua Treaty of 1794, is not subject to the collection of New York State Cigarette Taxes, however remains subject to Federal Cigarette taxes.

The Cayuga Nation of New York is a Indian Tribe recognized by the Bureau of Indian Affairs. BIA 85 FR 5462.

The United States recognized the approximately 64,000-acre area as the Cayugas' reservation in the 1794 Treaty of Canandaigua. See, Cayuga Indian Nation of New York v. Cuomo, 758 F. Supp. 107 (N.D.N.Y 1991).

"In 1790, Congress passed the first Indian Trade and Intercourse Act ("the Non-Intercourse Act"), ch. 33, 1 Stat. 137 (1790); see Mohegan Tribe v. Connecticut, 638 F.2d 612, 616 (2d Cir.1980). The Act provided that: no sale of lands made by any Indians, or any nation or tribe of Indians ... within the United States, shall be valid to any person or persons, or to any state, ... unless the same shall be made and duly executed at some public treaty, held under the authority of the United States. Non-Intercourse Act § 4, 1 Stat. at 138." Citizens Against Casino Gambling in Erie Cty. v. Chaudhuri, 802 F.3d 267, 271-72 (2d Cir. 2015)

In 1795 and 1807, the Cayugas' reservation land was sold to the State of New York. See Cayuga Indian Nation of New York v. Cuomo, 730 F.Supp. 485 (N.D.N.Y.1990) ("Cayuga III"). Those conveyances were never ratified by the United States, however, and as such, the court in the Land Claim 5 held that they were in violation of the Nonintercourse Act, and thus are void ab initio, as though they never occurred. See Cayuga Indian Nation of New York v. Pataki, 79 F.Supp.2d 78, 84 (N.D.N.Y.1999) ("Cayuga XII"); Cayuga III, 730 F.Supp. at 492-493.

Cayuga Indian Nation of New York v. Vill. of Union Springs, 317 F. Supp. 2d 128, 132 (N.D.N.Y. 2004).

“(B)ecause there has been no congressional act to terminate the reservation status of the (Cayuga) Property, it remains within the Nation's reservation land, and as such, is Indian Country pursuant to 18 U.S.C. § 1151(a).” Cayuga Indian Nation of New York v. Vill. of Union Springs, 317 F. Supp. 2d 128, 143 (N.D.N.Y. 2004).

The New York State Court of Appeals has ruled that New York Tax Law § 471 cannot be enforced against a Convenient Store operated by the Cayuga Tribe selling cigarette products at retail operated on the 65,000 acre Cayuga Reservation. Cayuga Indian Nation of New York v. Gould, 14 N.Y.3d 614, 630 (2010). The Court found that fee-title lands purchased by the Cayuga Indian Nation fell within the definition of “qualified reservation” for the purposes of two New York cigarette-sales-tax statutes.

That Court stated that: “In sum, although certainly “imposes” a cigarette sales tax, we conclude that the Cayuga Nation is entitled to a declaration that the absence of an appropriate legislative or regulatory scheme governing the calculation and collection of cigarette sales taxes that distinguishes between federally exempt retail sales to Indians occurring on a “qualified reservation” and non-exempt sales to other consumers precludes reliance on Tax Law § 471 as the sole basis to sanction Nation retailers for alleged noncompliance with the New York Tax Law.” Cayuga Indian Nation of New York v. Gould, 14 N.Y.3d 614, 653 (2010).

The New York Court of Appeals decided that “when the Legislature used the term ‘reservation’ in Tax Law § 470(16)(a), it intended to refer to any reservation recognized by the United States government.” *Id.* at 637, 904 N.Y.S.2d 312, 930 N.E.2d 233; see also *id.* at 638, 904 N.Y.S.2d 312, 930 N.E.2d 233 (“[T]he ‘qualified reservation’ question distills to whether the convenience store parcels are viewed as reservation property under federal law.”). The Court then determined that “the United States government continues to recognize the existence of a Cayuga reservation in New York.” *id.* at 640, 904 N.Y.S.2d 312, 930 N.E.2d 233, and observed that the Supreme Court's decision in *Sherrill III* “d[id] not establish that the convenience stores are not located on a reservation.” *id.* at 643, 904 N.Y.S.2d 312, 930 N.E.2d 233.

Oneida Indian Nation of New York v. Madison Cty., 665 F.3d 408, 438 (2d Cir. 2011).

The New York State Tax Law provides the following definitions with regard to cigarette taxes:

14. “Indian nation or tribe.” One of the following New York state Indian nations or tribes: Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Poospatuck or Unkechauge Nation, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Band of Seneca and Tuscarora Nation.

15. “Qualified Indian.” A person duly enrolled on the tribal rolls of one of the Indian nations or tribes. In the case of the Cayuga Indian Nation of New York, such term shall include enrolled members of such nation when such enrolled members purchase cigarettes on any Seneca reservation.

16. "Qualified reservation."

(a) Lands held by an Indian nation or tribe that is located within the reservation of that nation or tribe in the state:

(b) Lands within the state over which an Indian nation or tribe exercises governmental power and that are either (i) held by the Indian nation or tribe subject to restrictions by the United States against alienation, or (ii) held in trust by the United States for the benefit of such Indian nation or tribe:

(c) Lands held by the Shinnecock Tribe or the Poospatuck (Unkechaug) Nation within their respective reservations: or

(d) Any land that falls within paragraph (a) or (b) of this subdivision, and which may be sold and replaced with other land in accordance with an Indian nation's or tribe's land claims settlement agreement with the state of New York, shall nevertheless be deemed to be subject to restriction by the United States against alienation.

17. "Reservation cigarette seller." A seller of cigarettes which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells cigarettes within the boundaries of a qualified reservation.

New York Tax Law §470.

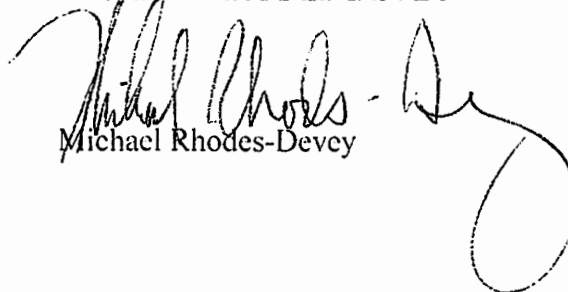
Thus, New York Tax law recognizes as a Reservation cigarette seller, members of the Tribe who sell cigarettes within the boundary of the qualified reservation.

New York's Cigarette Tax is a Use Tax, meaning that the tax is imposed upon the consumer, although it is collected at the Distributor level. New York Tax Law §471-a. Such taxes cannot be collected from members of the enumerated New York Tribes or from the Tribes themselves. If a non-native purchases cigarettes from an Indian retailer within a qualified reservation, it is the obligation of that purchaser to pay the taxes due thereon to the State of New York.

I hope that this letter satisfactorily address your questions. Please don't hesitate to contact me if I can do anything further for you.

Very truly yours,

MICHAEL RHODES-DEVEY

  
Michael Rhodes-Devey