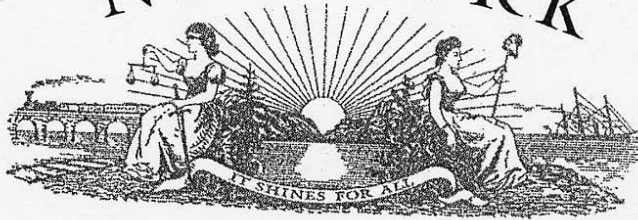


The

NEW YORK



Sun

WEEKEND EDITION, FEBRUARY 3-5, 2006

Addicted to Excise

We've never been ones for higher cigarette taxes, and we have even argued in the past that Albany needs to change the law to allow tax competition from out-of-state vendors who sell their wares over the Internet. That being said, however, the law is the law until the legislature changes it, and in one instance at least, Governor Pataki needs to start enforcing the law in respect of cigarette taxes. As a city councilman and a state senator, along with representatives of convenience stores and bodegas, noted on the steps of City Hall yesterday, the state is supposed to be collecting cigarette taxes on Indian reservation sales to non-Indians. It is not. Before anyone starts trying to impose even more punitive taxes on a legal product, the state could at least collect the excise it already levies.

At least since the 1990s, the state has, at least in theory, taxed the cigarettes that Indian tribes sell to non-Indian visitors to their reservations. Thanks to the high taxes imposed on packs sold at ordinary New York retailers, however, the tribes had been doing a lucrative business on "discounted" tax-free cigarettes and objected when the state tried to cut in on their trade. Some challenged the new tax collections in court, where a unanimous United States Supreme Court eventually ruled that the tribes' sovereign status didn't protect them from taxes for transactions involving non-Indians. However, some took to the streets, literally, shutting down major highways by burning tires at the roadside, causing mile-long back-ups that led to one accident that claimed the life of an innocent motorist.

Ever since, Governor Pataki has seemingly lost his will to enforce the law. A spokesman yesterday told the Sun's

Bradley Hope that the governor prefers to gain the tribes' compliance by negotiating individual compacts with them, despite the fact that they already have a legal obligation to pay the taxes. By one conservative estimate, the state is losing \$450 million a year by not collecting the tax on in-person sales on reservations as well as Internet sales and packs that end up in the hands of street vendors. Mayor Bloomberg has attempted to solve the problem mainly by pursuing consumers who buy over the Internet. And even while current taxes go uncollected, both the mayor and the governor have proposed their own competing additional tax hikes on the New Yorkers who do pay the cigarette taxes.

While we believe the law should be enforced, we don't mind saying that the way excise has been placed upon cigarettes in the state and city of New York is an outrageous abuse of governmental authority. Messrs. Bloomberg and Pataki love to cite public health when appealing for tax hikes. But their claims are not credible. If they cared so much about Medicare and Medicaid expenditures or lung cancer rates, they would enact an outright ban on the supposedly deadly products instead of turning them into a money machine for the state. They are willing to tolerate cigarettes because they want the money — and because New Yorkers wouldn't approve a ban on the sale and use of a product millions of New Yorkers have weighed the risks of and decided to enjoy. When the laws already on the books are enforced, New Yorkers will feel even more clearly the tax increase that such a move represents and pressure will grow for an end to the government's addiction to tobacco money.