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Governor Paterson Signs Cigarette Tax Legislation

Governor David A. Paterson today signed a bill to curb the sale of untaxed cigarettes to Indian retailers in violation of the cigarette tax laws of New York State. The New York State Department of Taxation will have 60 days to issue a certification form and prepare to receive the certifications that will be submitted. Governor Paterson signed bill A11258AI S 8146-B at a ceremony in Utica.

Under Article 20 of the Tax Law, cigarettes sold by Indian retailers to non-Indians must be taxed. The bill signed by Governor Paterson today will prohibit cigarette manufacturers from selling unstamped cigarettes to stamping agents who have not provided them with a certification, under penalty of perjury, that the cigarettes will not be resold in violation of Article 20. Agents must provide the Tax Department with any certification they give to a manufacturer.

“This law has not been adequately applied for far too long giving non- Indians easy access to tax- free cigarettes both on the reservations and over the internet,” said Governor Paterson. “However, the signing of this bill should not be seen as anything other than enforcing the tax laws of New York in a fair and effective manner. My commitment to the sovereign powers of New York's Indian Nations has not and will not waver and I will continue to seek a comprehensive negotiated solution with all of New York's Indian Nations.”

Although cigarettes sold by agents to retailers for resale to non- Indian purchasers must bear tax stamps, the State has, for many years, adopted a policy of non-

enforcement, and unstamped cigarettes continue to be sold by agents to Indian retailers who sell them to non-Indians at discount prices.

Governor Paterson stated: “Tomorrow, I will present my 2009-2010 budget proposal and while we will continue to aggressively and responsibly address New York's current budget crisis, this bill is not only about collecting revenue for the State of New York, it is also about protecting the health of our citizens. Smoking has long been a tragic public health crisis in New York and around the world. In recent years, the New York State cigarette tax has been one of our most effective tools in addressing this crisis. To the extent that the tax is undermined, our efforts to fight smoking are also undermined.”

Senator Michael Nozzolio, co-sponsor of the bill, said: “For far too long, retail businesses throughout our region have been harmed by an unfair tax policy, driving jobs out of the region and hurting small business owners. Today's signing of Senate bill 8146 is a historic day for leveling the playing field for all of New York's businesses and I thank Governor Paterson for ensuring that this important legislation will now be New York State law.”

Assemblyman Bill Magee, co-sponsor of the bill said: “I am very pleased that New York will soon begin to collect taxes on cigarettes sold on or through Indian land to non-Indian purchasers. The State has long had the legal authority to collect this important revenue stream. We now have a proper mechanism in place that will assure that especially in these hard economic times, taxes on cigarettes are fairly collected. I thank Governor Paterson for signing this important legislation.”

Under the law, an agent who violates Article 20 of the Tax Law is subject to revocation or cancellation of its license. A false certification could be referred to a district attorney's office for prosecution for perjury or filing a false instrument.

Additionally, this bill requires the Commissioner of Taxation and Finance to prescribe a form for the certification process and instructions on how to use the form within 60 days of the bill becoming law. The Tax Department must be prepared to receive certification forms in the same time frame.

Seneca Indians Prepare Response

The Seneca Indian Nation is preparing to collect tolls on sections of the New York State Thruway that run through reservation land to protest the state's plans to tax cigarettes destined for their discount smokeshops.

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The tribal council also has authorized Seneca President Barry Snyder Sr. to spend \$1 million to hire "emergency response personnel" to protect the Seneca people against potential action by the state. They also plan to ask incoming President Barack Obama for federal troops if necessary.

Snyder outlined the plans Tuesday in response to Gov. David Paterson's Dec. 15 signing of a law that would disrupt the Senecas' \$313 million retail sector by enforcing tax collections on cigarette wholesalers who supply reservation businesses. "Our concern as nation leaders justifies taking any and all prudent actions to protect and defend the nation's economy and the way of life of the Seneca people," Snyder said. Those actions include charging \$2 for every vehicle that drives the Thruway, Snyder said, with the system for collecting the tolls to be determined.

In April 2007, the 7,300-member tribe rescinded a 1954 agreement that allowed construction of the Thruway along 300 acres of Seneca territory in the Cattaraugus Reservation. Since then, the Senecas have unsuccessfully been billing the state \$1 per vehicle passing through its land on the Thruway. The tribe is doubling the fee in the wake of the newly passed law. "The state and the Thruway Authority are trespassing on our lands and have not paid us for the right to do so," Snyder said. "The council and I believe that the state should not be allowed to continue to operate an illegal business -- the New York State Thruway -- upon nation lands at the same time that it seeks to destroy a significant component of the nation's economy."

The Senecas have taken aim at the Thruway before, including setting tire fires that shut down a 30-mile stretch in 1997 and led to clashes with state police. Snyder said the "peaceful nation" is not looking for a fight now but must act to protect itself and a retail sector that employs 1,000 people. A spokeswoman for Paterson, who took office last spring, said the governor wants to forge relationships with all of New York's Indian tribes.

"The tax collection issue is one of several issues that the governor would like to address as he moves forward to negotiate with all of the Indian nations in good faith," a statement by spokeswoman Marissa Shorestein said.

DEC Bottle Bill Enforcement On The Rise

We again must report that the New York State Department of Conservation is doing sting operations to enforce the deposit requirements under the State returnable container laws. A conservation officer enters the facility and requests the return of his/her deposit on a beverage container that is eligible for a return deposit. If the clerk does not comply than a violation is issued. The fine for this violation is up to \$500.00.

During the first ten-month of 2008 there were 551 stings performed statewide and 117 violations issued. The violation will have the name of a conservation officer to call and schedule a settlement conference. The fines, as best we could determine, are \$50.00 at the settlement convenience of \$500.00 if you choose to go to an administrative hearing.

Our attorney tried to contact the settlement officer in

one case and was unsuccessful. The best thing to do if you get this kind of violation is to call the Association Office. In the mean time be sure to inform your employees that they must return deposits on beverage container of the product sold in your store. For more information, please call the Office.

Boxer to Introduce Streamlined Climate Change Legislation in 2009

Senate Environment and Public Works chairman Barbara Boxer, D-Calif., announced last week that she would be introducing a "streamlined" climate change bill in early 2009 that would direct the Environmental Protection Agency (EPA) to design an emissions trading program to halt the increase of greenhouse gas emissions. EPA's authority to design the program would come from amending the Clean Air Act.

While Boxer did not list any specifics of the legislation, she did say that it would follow the goals laid out by President-elect Obama. Obama has called for an 80 percent reduction from 1990 levels by 2050. This would be accomplished by a trading plan that would auction 100 percent of allowances to power plants, manufacturers and other businesses. Going forward, the auction system would raise trillions of dollars to help offset higher energy prices and to help pay for investment in clean-energy projects and sources, though some opponents are concerned that the auction system would raise compliance costs and further harm the economy.

Boxer also plans to introduce a second bill that would create an annual \$15 billion clean energy grant program to help in the development of solar, wind and additional clean-energy sources. If passed, the legislation could lead to the creation of millions of green jobs in the U.S.

Senate Committees Meet to Discuss Health Care Reform

In support of what is sure to be one of the most important issues in the upcoming 111th Congress, Senate Finance Committee chairman Max Baucus, D-Mont., and Senate Health, Education, Labor and Pensions Committee chairman Edward Kennedy, D-Mass., along with other influential members of both committees, met on Nov. 19, vowing to work together to enact health care reform in 2009. Health care is expected to be one of the very first bills that both committees will consider once the new Congress convenes in January. Many of the lawmakers have acknowledged that the growing momentum among stakeholders, elected officials and their constituents has made early 2009 an opportune time to turn attention to reform.

The Nov. 19 meeting was held to determine areas of agreement and disagreement between the members and to clarify what work would be done by each committee. One area of agreement seems to be that, unlike the failed attempt by the Clinton administration to pass sweeping health care reform in the 1990s, Congress needs to take a strong lead in

developing reform legislation. Though each committee sees themselves as having jurisdiction over many of the major reform provisions, both sides appear confident that they can work together to push the legislation forward.

Members Urged to Support Pension, Tax Relief Bill

The Worker, Retiree and Employer Recovery Act of 2008 was introduced on Nov. 20 by four high-ranking Senate leaders: Senate Finance Committee chairman Max Baucus, D-Mont.; Ranking Member Charles Grassley, R-Iowa; Senate Health, Education, Labor and Pensions Committee chairman Edward Kennedy, D-Mass.; and Ranking Member Mike Enzi, R-Wyo. The legislative package is designed to provide pension and tax relief for businesses.

The bill contains several provisions intended to help companies during the current economic crisis and to minimize the adverse impacts to their businesses, their workers and their sponsored pension benefits plans. Among these provisions is the ability for companies to “smooth out” the value of their pension plan assets by allowing them to factor in future earnings. Companies would also be given additional time to transition to new funding rules.

The legislation also contains an investment provision that would extend the current-law bonus depreciation and expanded expensing provisions through 2009. These provisions are currently set to expire at the end of 2008. Through the reduction of the after-tax cost of investment, these provisions are intended to spur additional investment while giving companies more available cash for job retention and creation.

Interested AAILA members are urged to contact their senators to ask for their support of the bill. Given the congressional schedule for the lame duck session, it is not certain that the legislation will see consideration this year, but strong support from companies could help move it up the legislative priority list on Capitol Hill.

CPSC Seeks Public Comment New Civil Penalty Factors

The Consumer Product Safety Commission (CPSC) announced on Nov. 18 it is requesting public comment and information on civil penalty factors amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA). CPSC will issue a final rule on civil penalties before or on Aug. 14, 2009 to provide an interpretation of factors to be considered in determining the amount of civil penalties. Penalty factors include such criteria as the nature, circumstances and gravity of the violations; the severity of the risk; the occurrence or absence of injury; and the appropriateness of the penalty.

The CPSIA raised the maximum civil penalties from \$5,000 to \$100,000 for each violation, and the maximum possible civil penalties to \$15 million for any related series of violations. CPSC wants to know what information the commission should consider under each of the above factors. In addition, CPSC is seeking information on:

- Other factors that would be appropriate to consider, including previous record of compliance, timeliness of response, safety and compliance monitoring, cooperation and good faith, economic gain from noncompliance, and product failure rate.
- Whether the commission should develop a formula or matrix to weigh any or all of the various factors, and the criteria it should use in any weighting formula or matrix.
- Any information the commission should consider in determining how to mitigate the adverse economic impact of a particular penalty on small business.

Comments are due on Dec. 18, and may be filed by e-mail to civilpenaltyfactors@cpsc.gov or faxed to 301-504-0127. Before the final rule is issued, a proposed rulemaking will be published in the Federal Register, which will also provide an opportunity to comment.

Non-Fatal Workplace Dropped in 2007

The Bureau of Labor Statistics (BLS) on Nov. 20 released a report announcing the rate of non-fatal occupational injuries and illnesses requiring days away from work fell by 4 percent in 2007 to 122 cases per 10,000 workers, down from a rate of 128 per 10,000 in 2006.

Labor Secretary Elaine Chao said, “From 2003 to 2007, the total number of injuries and illnesses with days away from work declined 11.9 percent, which demonstrates that a comprehensive strategy of targeted enforcement coupled with an emphasis on prevention through compliance assistance is most effective.”

The rate of musculoskeletal disorders requiring days away from work dropped by 9 percent in 2007, to 35 cases per 10,000, which Chao called a “noteworthy” development. The occupation responsible for the largest share of days-away-from-work cases was the labor and freight, stock and material movers sector, which claimed 6.8 percent of the total. Next came heavy and tractor-trailer truck drivers (4.9 percent); nursing aides, orderlies and attendants (3.9 percent); construction laborers (2.9 percent); light or delivery service truck drivers (2.8 percent); and retail sales (2.8 percent). Men accounted for about 64 percent of the total number of cases and had an incidence rate of 134 per 10,000 workers, 22 percent higher than the rate for women (105 per 10,000 workers).

The trunk (including the shoulder and back), which was injured in 33.2 percent of all cases, was the most commonly injured part of the body, with sprains and strains being the most frequent type of injuries and illnesses, accounting for just over 38 percent of all cases.

Labor advocates attribute the 4 percent drop in the rate of non-fatal occupational injuries and illnesses requiring days away from work to employer underreporting that has artificially pushed BLS figures down. Advocates say incentive programs for safe work records have become “much more prevalent and much more common in recent years, despite the fact that American workplaces have grown increasingly more dangerous.

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Waxman Ousts Dingell as Chair of House Energy and Commerce Committee

The full democratic caucus of the U.S. House of Representatives on Thursday, Nov. 20 elected Rep. Henry Waxman, D-Calif., 137-122, to be the chairman of the Energy and Commerce Committee for the upcoming 111th Congress. Waxman won the full caucus vote the day after winning the nomination in a close 25-22 vote from the Steering and Policy Committee.

Waxman will be assuming the gavel from Rep. John Dingell, D-Mich., who has served as either chairman or ranking member of the committee for 27 years. Taking over his father's seat, Dingell, a staunch supporter of the automakers, is the longest-serving current member of the House and second longest-serving in history.

Waxman, the former second-ranking democratic member of the Energy and Commerce Committee, has also served as chairman of the House Committee on Oversight and Reform – a post from which he stepped down following his election to the chairmanship of the Energy and Commerce Committee. The Committee on Oversight and Reform is expected to be far less active in the year to come, given the democratic administration and the democratic majorities in both the House and Senate.

The Energy and Commerce Committee is a key committee to the aftermarket because it has traditionally had jurisdiction over the Motor Vehicle Owners' Right to Repair Act. Given Dingell's long-time support of the automakers, the ascension of Waxman to the chairmanship eliminates a major obstacle to committee consideration of the legislation. Waxman also has long been a strong advocate for climate change and emissions control, and has stated that he will make legislation aimed at limiting emissions of global warming gasses a priority.