

1 **2006 NYSAC Fall Seminar**
2 **Standing Committee on Native American Affairs & Gaming**
3 **Resolution #01**

4
5 **RESOLUTION CALLING FOR THE COLLECTION OF**
6 **SALES AND EXCISE TAXES ON TRIBAL LANDS**
7

8 **WHEREAS**, during the pendency of land claims brought by Indian tribes for
9 large tracts of land across New York State, tribal governments purported to assert
10 jurisdiction over taxation, law enforcement, gambling, boxing, motor vehicle licensing,
11 land use, environmental regulation, law enforcement and other matters; and
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13 **WHEREAS**, during the pendency of these land claims the State of New York
14 elected to exercise forbearance on counter-assertions of state jurisdiction over these
15 matters; and
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17 **WHEREAS**, recent court decisions by the United States Supreme Court in the
18 *City of Sherrill v. Oneida Indian Nation of New York (No. 03-855)* and by the Second
19 Circuit Court of Appeals in the *Cayuga Indian Nation of New York, et al. vs. Pataki, et*
20 *al. (2nd Cir. Docket No 02-6111(L))* have significantly altered the legal landscape and
21 have affirmed, unequivocally, comprehensive state and local jurisdiction over lands and
22 issues in question; and
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24 **WHEREAS**, tribal governments in every part of New York State: from Long
25 Island to the Canadian border; from Lake Ontario to the Pennsylvania border; from the
26 Hudson Valley to the Finger Lakes and the Niagara frontier and Central New York
27 continue to raise significant controversy through litigation focused on jurisdiction,
28 property rights, Indian gaming and tribal sovereignty; and
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30 **WHEREAS**, numerous federal court cases involving the application of state and
31 local excise and sales taxes on sales by tribal retailers to non-tribal members, including
32 the United States Supreme Court case of *Department of Taxation and Finance of New*
33 *York et. al. v. Milhelm Attea and Bros., Inc., et. al. (No 93-377)*, have repeatedly affirmed
34 that states have a right to the sales and excise tax revenues on such transactions; and
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36 **WHEREAS**, the New York State Association of Counties (NYSAC) believes that
37 a failure of the State of New York to assert its sovereign prerogatives with regard to
38 taxation and other areas of governmental jurisdiction is detrimental to the well-being of
39 citizens and the interests of local governments across the state; and
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41 **WHEREAS**, failure to collect sales and excise taxes on tribal and Indian sales to
42 non-tribal members has been particularly damaging to the citizens and governments of
43 New York because this failure deprives the State of New York and local governments of
44 legitimate, legal revenues which are desperately needed for public programs; and
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1 **WHEREAS**, failure to collect these taxes on tribal and Indian sales further
2 creates a grossly unfair business environment for non-Indian retailers across the State of
3 New York by diverting business to tribal and Indian retailers and by giving tribal and
4 Indian retailers a grossly unfair competitive advantage; and

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6 **WHEREAS**, the Legislature of the State of New York, by legislation contained
7 in Chapter 62 of 2003 amending various laws of the State regarding taxation, required the
8 Commissioner of Taxation and Finance to implement, not later than September 16, 2003,
9 measures to effectively collect sales and excise taxes on tribal and Indian sales of tobacco
10 and motor fuels to non-tribal members; and

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12 **WHEREAS**, the Commissioner of Taxation and Finance previously published
13 rules and regulations which would attempt to collect those taxes upstream from the point
14 of sale, the implementation of which has been postponed; and

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16 **WHEREAS**, the Governor introduced language in the 2006-07 Executive Budget
17 Proposal to effectively delay collection of sales and excise taxes on Native American
18 lands until January 1, 2007, and

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20 **WHEREAS**, the State of New York continues to delay the collection of sales tax
21 despite its statutory authority and obligation; and

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23 **WHEREAS**, the State Legislature this year passed legislation
24 (A10859A/S7568A) that would have prohibited cigarette manufacturers from delivering
25 their product to any licensed distributor who has been identified by the Attorney General,
26 the NYS Department of Taxation and Finance or the City of New York as an illegal
27 supplier of unstamped cigarettes; and

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29 **WHEREAS**, Governor Pataki vetoed that legislation in August of 2006, and

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31 **WHEREAS**, NYSAC and its individual members have repeatedly expressed
32 unqualified, strong support for implementation of such measures to collect these taxes on
33 tribal sales to non-Indians:

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35 **NOW, THEREFORE, BE IT RESOLVED**, that NYSAC calls on the Governor
36 of the State of New York to take any and all necessary action to insure the collection of
37 all sales and excise taxes on tribal and Indian sales of all goods and services to non-tribal
38 members for the benefit of state and local governments without further delay; and

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40 **BE IT FURTHER RESOLVED**, that New York State take action to
41 affirmatively assert its sovereign prerogatives and jurisdiction consistent with recent
42 court decisions, New York State and federal law; and

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44 **BE IT FURTHER RESOLVED**, that NYSAC shall forward copies of this
45 Resolution to the Governor, the New York State Legislature and all others deemed
46 necessary and proper.