

Committee on Resources

Witness Statement

Testimony of
Michael Holahan
President, The North American Truckstop Network
and Member of
NATSO
Representing America's Travel Plazas and Truckstops
Before the
House Resources Committee
United States House of Representatives
Collection of State Taxes by Tribal Retailers

October 12, 1999 My name is Michael Holahan, and I am the Chief Executive Officer of the North American Truckstop Network, a 125-member independent truckstop network. I am testifying today on behalf of NATSO, the professional association of America's travel plaza and truckstop industry, of which NATSN is a member.

I commend you, Mr. Chairman, for holding these important hearings. Our industry appreciates your commitment to finding a solution to a very difficult problem that threatens the retail fuel and convenience store industry and the state tax base. Native American business owners who aren't collecting state taxes from non-tribal members can gain a significant advantage selling two principal products - fuel and cigarettes. That is because the state taxes for these two products make up a large portion of the total price. But there are sound public policy reasons behind these taxes.

Fuel taxes are used to support the highways - this is a fair, user paid system. The users of a state highway pay their share for the maintenance and upkeep of those roads each time they purchase fuel. Is it fair for truck drivers to fuel at a Native American business located right off of the Interstate and then damage the state's roads without paying their fair share?

Is it fair for the Native American retailer, who depends on a safe and efficient highway system to get customers to their retail stores and casinos, to allow the highway user to avoid the taxes that pay for that

system?

In the case of cigarettes, many individuals maintain that the tax is appropriately high because studies show that higher prices are a deterrent to smoking, particularly among young people. Allowing Native Americans to sell discount cigarettes at smoke shops or over the Internet without charging taxes on sales to non-Native Americans thwarts those public policy objectives. In addition, because the reservation smoke shops fall outside of state tobacco regulations and enforcement activities, we were quite concerned in the State of New York over the very real possibility of minors being allowed to even purchase cigarettes.

Some have questioned whether or not this problem even exists. Well, I can tell you that it does. Before I began my new position, I was Vice President of Sales for Travel Ports of America, a small chain of travel plazas operated primarily in the Northeast and we were constantly fighting a competitor who routinely priced his product 15 to 20 cents below us.

And the problem is growing. A NATSO member outside of Albuquerque, New Mexico, told us that over the summer, a tribe 16 miles from his facility added diesel pumps to their convenience store facility and casino complex immediately off of Interstate 40. The NATSO member estimates that he has lost approximately 3,000 to 5,000 gallons a day since these diesel pumps were installed because the tribe was selling fuel, on average, 15 cents per gallon below his cost to acquire the product. New Mexico has a diesel fuel tax of 18 cents per gallon.

And you don't have to have the Native American business in your backyard, or in your state, to have the marketplace disrupted. A 1996 article in the *Buffalo News* describes how Michigan has lost \$144 million a year as a result of smuggled cigarettes. One third of those smuggled cigarettes are believed to come from three Native American reservations in western New York. Just last week, 31 people were indicted with running a cigarette-smuggling operation that involved \$70 million worth of untaxed cigarettes that were supposed to be sold in Native American smoke shops, but instead wound up being sold in non-Indian stores in Michigan and in the Buffalo area. It is particularly ironic that the state of Michigan must confront this problem, since they have done the right thing and have reached compacts with the tribes in their state.

We believe that at some point this problem will be solved because the potential losses for state government will be too high to ignore. But, the question we must ask is how long will it take? How many millions of dollars of lost revenue does the state have to incur or how many of our members will be put out of business before we reach a solution?

It is far easier to solve this problem in its infancy as opposed to that time down the road when Native Americans have invested millions of dollars in fuel retailing facilities and have become dominant in the marketplace only because their customers can evade legally due taxes.

That is why our industry strongly supports H.R. 1814 as a solution to this problem. Quite simply, the bill provides states with something they don't have now - the slightest bit of leverage to bring the tribes to the negotiating table to work out a fair compact so the marketplace can remain balanced. And this legislation provides the tribes with something they don't have now - a reward for being able to reach an agreement with the state.

Unlike previous efforts we have supported, this legislation will only affect those tribes who are the "bad actors" - the ones who willfully and consistently refuse to collect and remit taxes that are legally due. To those that argue this issue really isn't a problem - that Native Americans are collecting and remitting state

taxes - you have absolutely nothing to fear. For those tribes that are collecting and remitting state taxes, or that are complying with a state compact, this legislation would have absolutely no effect but one: it would give them preference in the federal grant process.

Perhaps the Committee would like to explore other solutions; we would certainly be willing to work with you in that endeavor. However, from our industry's perspective, any solution should have three minimum requirements. First, it should encourage, as H.R. 1814 does, resolution of this issue on a state-by-state basis through compacts. Second, the solution must guarantee that retail markets cannot be undercut and that all businesses will compete on a level-playing field. And finally, the solvency of state highway trust funds must not be threatened because to do otherwise would shift additional burdens to the backs of our fuel-purchasing customers.

Again, Mr. Chairman, our industry commends you for holding these hearings and we look forward to working with the Committee in finding a solution that is fair to all involved.

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