



**Upstate Citizens for Equality
Niagara Frontier Chapter**

836 Indian Church Road
West Seneca, NY 14224-1235
<http://www.upstate-citizens.org>

January 31, 2004

Hon. Owen H. Johnson
913 Legislative Office Building
Albany, New York 12247

Hon. Herman D. Farrell, Jr.
923 Legislative Office Building
Albany, NY 12248

Dear Chairmen Johnson and Farrell:

Please accept this letter as Upstate Citizens for Equality's public comment on the 2004-2005 State Budget pursuant to Legislative Law § 32-a.

Upstate Citizens for Equality is a grassroots community organization representing approximately 8,000 citizen taxpayers in Central and Western New York. It is our position that the Budget proposed by the Governor is irresponsible and does not truly address the needs of New York's citizens.

The budget as proposed by the Governor is based on contingent revenues. These contingent revenues are receipts from Class III Indian gaming in the state. Since the enactment of Chapter 383 of the Laws of 2001 only one casino has opened and the state has received only one payment of approximately \$38 million. However, the continued vitality of this revenue stream is in serious question. There are currently two lawsuits challenging the constitutionality of the authorizing act. The first is Dalton v. Pataki which is currently before the Appellate Division, Third Department. The second is Warren v. Pataki just commenced in the New York Supreme Court, Erie County. This revenue stream should not be counted on to fund core obligations of the state to its citizens. Specifically the Executive Budget relies on \$2 billion dollars of receipts from the VLT expansion to 8 racetracks. This number is highly speculative because since the enactment of the challenged enabling act and prior to the drafting of the budget not one VLT had been installed and therefore it is not even based on an extrapolation of current installations. It is also too early to draw any meaningful data to extrapolate from the recently installed VLTs.

At the same time it is counting on contingent receipts it asks to delay the implementation of the regulations enforcing New York's valid tax laws on sales to non-Indians and Indians that are not an enrolled member of the reservation where the transaction occurs (hereinafter referred to as non-members). This revenue source has been estimated to be between \$432 million and \$900 million annually. This source of revenue which will be undoubtedly challenged by the Indian nations and tribes has been upheld by a unanimous U.S. Supreme Court in N.Y. Dept. of Taxation v. Milhelm Attea & Bros., Inc. The justification given to support this requested delay is to provide the Governor with time to negotiate tax or price parity agreements with the various Indian Nations or tribes. However, he is without power to do this and the Legislature is without power to give him the authorization to do so. The New York Constitution Article XVI § 1 provides "The power of taxation shall never be surrendered, suspended or contracted away,



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except as to securities issued for public purposes pursuant to law." Therefore no one is empowered to enter into any contract or agreement of this nature. "A contract for a pre-established limit on tax liability, whether it be considered as conferring 'tax exemption' or 'tax savings', or tax relief by any other label, is clearly barred by this sweeping prohibition." (Matter of Roosevelt Raceway v. Monaghan, 9 N.Y.2d 293, 308-309; app. dsmd. 368 U.S. 12.) Additionally, a recent study commissioned by Fair Application of Cigarette Taxes (FACT) concluded that by enforcing these laws, in addition to the tax revenue, over 2,000 jobs would be created with an additional \$60 million in personal and corporate income taxes.

The State must come up with a way to meet its Constitutional obligation to provide a free basic education to its children as directed by the New York Court of Appeals in Campaign for Fiscal Equality v. Pataki. Although that case was specific to New York City schools the problem is statewide. This is not going to be an easy task and should not be funded on speculative and contingent revenue streams but from steady and predictable ones. Our State Constitution permits a state operated lottery "in aid or support of education." This provision of our Constitution was intended to provide an additional revenue stream to our educational system not replace or reduce the State's obligation to fund it. Therefore the revenue generated in this manner should not be considered in any funding formula for meeting the State's Constitutional obligation.

Currently, some health insurers offer single plus 1 coverage. This coverage covers the employee and one dependent. The rates charged for this coverage is more than that of a single person but less than that of a family plan. Most, if not all, state agencies and municipalities do not offer this as an option to their employees and retirees. The State and its municipalities can lower their health insurance costs by offering this type of coverage to its employees and retirees. With the appropriate legislation health insurers can be required to offer this type of coverage. This will help reduce this expense in the public and private sector at all levels and will reduce this type of expense to people who need coverage but find it hard to afford it namely couples just entering the workforce, single parents and our retirees.

For these reasons the enforcement of our tax laws as they relate to non-members on Indian land should not be delayed any longer and the proposed revenue sources that are contingent or speculative should not be considered for core obligations such as education and therefore alternate sources of cost savings and revenue generation should be considered.

Sincerely,

Daniel T. Warren
Chair
Niagara Frontier Chapter of Upstate Citizens for Equality