

# TRIBAL TOBACCO NEWS

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## TRIBAL TOBACCO TAX TRAINING AND SEMINAR A BIG SUCCESS!

Tribal leaders & their designated officials from 29 Native Nations traveled to Winnebago Nebraska for the anticipated Tribal Tobacco Tax Training & Seminar, held on August 23rd & 24th.

*"It was a big idea and it was a homerun!"* said Lance Morgan, Keynote Speaker and CEO of Ho-chunk Inc. Tribal sovereignty is under attack right now by states and their newly forged business partners, the big four tobacco companies.

While tribal nations are working hard to diversify their economies & create job opportunities for their citizens & the greater non-native community, the states and big tobacco are

working hand-in-hand to destroy the tribe's economy, increase unemployment for tribal members, & their non-native employees.

The tobacco tax training was designed to educate tribal leaders about the political, legal, & socio-economic issues surrounding tribal tobacco taxation, the PACT Act, Master Settlement Agreement, and state/tribe tobacco tax agreements. The presenters shared information with tribes showing how the states are now infringing upon tribal sovereignty. In addition,

attendees were given the critical information and tools that will lead to empowering tribal nations



Tribal Tobacco Tax Training Attendees

& help the tribes fight off state tax infringement.

A surveyed participant wrote what she liked best about the event: *"The emphasis on exercising sovereignty in order to move the tribe into a sustainable economy on its own terms."*

## WINNEBAGO TRIBE OF NEBRASKA WELCOMES NATIVE NATIONS



### HCI Distribution Tobacco

701 Buffalo Trail

Winnebago, NE 68071

Toll Free: 1-877-846-6805

Phone: 402-878-2300

Fax: 402-878-2302

**Email:**

sales@hcidistribution.com

**Website:**

www.hcidistribution.com

**"Indian Country" is Our Distribution Territory!**

# KEYNOTE SPEAKER ADDRESS: TAX IS ABOUT POWER!

The Tribal Tobacco Tax Training & Seminar attendees listened to Lance Morgan explain the cultural context of how the U.S. Supreme Court deals with taxation in "Indian Country."

Lance explained that U.S. tax cases are based on a simple principle: An "Indian" can not tax a white person. From this point of view, he further explained that this principle is fundamentally racist & is based on racist principles that stem from a different time period. He told the audience that

tribal lawyers & tribes are supposed to treat race-based taxation as though it were the "Ten Commandments."

Lance further explained that something has changed where the U.S. Supreme Courts' race-based taxation principle is being ignored in "Indian Country."



Lance Morgan, Keynote Address

Tribal economies are growing. Tribes own the businesses & are creating their own local economy. The effect is that tribes decide to tax themselves or their own businesses, which does not have anything to do with the archaic mentality of the U.S. Supreme Courts' race-based taxation. Instead, tribes adopt their own tribal tax laws, which are race-neutral & build up their own tribal economy.

# KEYNOTE SPEAKER ADDRESS: CONTINUED

Mr. Morgan further explained, the key to building tribal economies involves the expansive nature that tribal laws afford the Native Nations today.

Tribal lawyer training/education is incomplete because law students are only taught federal & state law but not Tribal Law. There is a clear distinction, Federal Indian Law is **NOT** "Tribal Law." This represents a development gap for law school students & practicing attorneys because Tribes stand

still when the tribal leaders' key advisor possess a limited or no understanding of all legal avenues available to the Tribes.

According to Lance, "Over the past 16-years as CEO of Ho-Chunk, Inc., it is crystal clear to me that the solution to tribal economic development requires a shift in thinking. Tribal leaders need to stop making decisions from someone else's racist paradigm or limited perception of the law. Instead, think for

*yourselves, develop your*

**"Sovereign immunity is the blood-brother to tribes. Writing your own tribal laws & revising your own constitutions is tribal power. Tribal Law Programs need to be created to better prepare our future lawyers, CEO's, & leaders," says Lance.**

*own tribal laws, & empower your community by taking unilateral action."*

# LEGAL EXPERTS BREAK DOWN THE MSA AND PACT ACT FOR TRIBES



Mr. Len Violi, Seneca brand legal counsel (left) & Joe Messineo, Frederick, Peebles, & Morgan (right) explain the Anti-Trust issues & tribal sovereignty infringement surrounding the MSA & PACT Act. In addition, how the states receive \$5.65 per carton in MSA Fees & do not share any with Tribes.



## TRIBAL TOBACCO TAXATION SUCCESS STORIES



### NATIVE NATION PANELISTS (ABOVE) EACH SHARE THEIR SUCCESS AND ADVICE

The tax training agenda included Native Nation leadership & managers sharing their success with implementing the tribal tobacco tax model on their sovereign tribal lands.

The honorable Christopher Swartz, President of the Keweenaw Bay Indian Community (*above*) shared his advice with the attendees. Mr. Swartz advised that tribes should never sign a tobacco tax agreement with the state and that they should always flex their

“Sovereign Muscle” to empower the tribe & fight off state infringement.

The honorable Chairwoman, Becci White of the Ponca Tribe of Nebraska (*center*), recommended that other tribes should form a business relationship with HCI because HCI delivers what they

promise. She also reminded attendees of the importance of having a proper business plan & adopting their own tribal tobacco tax law.

**Mr. Craig Nason, Manager of the Leech Lake Nation stores (*on right*) recommended to other tribes that they too should begin selling the tribal brands under the tribal tobacco tax model because the tribal brands, hands down are the most profitable for the tribe!**

## BEST PRACTICES FOR TRIBAL TOBACCO RETAIL LOCATIONS



Both Jan King & Marshall Bass with HCI retail stores, advise tax training attendees to take control of your tribal stores by canceling the major brand contracts; put major brands on bottom shelf; give tribal brands best shelf space; increase signage, & use eye level “Cereal Aisle” marketing.



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Winnebago, Nebraska 68071

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Direct: 402-878-2300  
Fax: 402-878-2302  
E-mail: sales@hcidistribution.com

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**Www.hcidistribution.com**



*HCI Distribution Tobacco (HCID) is a division of the parent company, Ho-Chunk, Inc. (HCI). HCI's immediate mission is to use the Tribe's various economic & legal advantages to develop & operate successful business enterprises & provide job opportunities for Tribal members. The long-term mission of Ho-Chunk, Inc. is to provide the Tribe with a large enough income stream from its business operations to enable the Tribe to reach economic self-sufficiency. HCI was launched in 1994 as the economic development corporation owned by the Winnebago Tribe of Nebraska. Since that time, HCI has successfully developed a variety of business enterprises both on & off the Winnebago Reservation and today employs 1,352 people in various industries throughout the United States & abroad. HCI Distribution is HCI's most successful on-reservation business whose main production facilities are located in Winnebago. HCID's success stems from our Native Nation customers leadership realizing the benefit of enacting their own tribal tobacco tax law. In so doing, tribes begin selling our tribal tobacco on their sovereign lands, diversifying their economy, & generating critical tribal government revenue used to rebuild their Nation.*

## **LEGAL UPDATE: THE PACT ACT AND TRIBAL SOVEREIGNTY**

The Prevent All Cigarette Trafficking Act (PACT Act) largely has succeeded in its main purpose of stopping the Internet mail-order tobacco business. However, another fight has emerged. The states are trying to turn the PACT Act into the "Master Settlement Agreement" (MSA) Enforcement Act.

The PACT Act includes built in protections for tribes but the states have been lobbying the federal government to manipulate some of the more ambiguous provisions of the PACT Act to require tribal companies to report their sales to the states.

Although tribal brand products are sold within "Indian Country", the states want that information so the

states can attempt to enforce the MSA on tribal lands. The states will try to use the sales information to enforce their private settlement with the tobacco companies on tribal lands.

Unfortunately, the PACT Act is poorly written and vague on its meaning in several critical areas. Last year, the federal government took some initial positions that favor the state's viewpoint. However, the PACT Act contains a provision that makes it clear the PACT Act is not supposed to give the states any additional rights over tribes.

If the tribes allow state infringement to continue, the initial positions taken by the federal government will no doubt

give the states additional rights over tribes, which should be an immediate and great concern to tribal leaders. Essentially, the states are infringing upon tribal sovereignty just because big tobacco companies want to insure there is an oligopoly in the tobacco industry that excludes tribal tobacco brand competition.

A growing coalition of tribal officials and lawyers are advocating on these issues with federal officials in Washington, D.C. However, the coalition has not **yet** made progress with the federal officials. The coalition will provide updates. I would suggest joining the coalition & asserting your tribal sovereignty surrounding these issues. Contact Lance Morgan at [Hochunk@aol.com](mailto:Hochunk@aol.com).