

Agreement with R + L Carriers as to Transportation of Cigarettes in New York State

This is an Agreement by and between the St. Lawrence County District Attorney and Greenwood Motor Lines, Inc., doing business as R + L Carriers.

I. Definitions

For purposes of this Agreement and for no other purpose, the following terms shall have the following meanings:

- A. “R + L” shall mean Greenwood Motor Lines, Inc., doing business as R + L Carriers, with headquarters in Wilmington, Ohio, and all companies affiliated therewith, including all wholly or partially owned subsidiaries, parents and all affiliated companies of any of them.
- B. “SLDA” shall mean the St. Lawrence County District Attorney.
- C. “Delivery Statute” shall mean New York Public Health Law §1399-ll.
- D. “Authorized Recipient” shall not include anyone to whom a delivery sale of cigarettes is prohibited by the Delivery Statute, and shall include only:
 - 1. A person licensed as a cigarette tax agent or wholesale dealer, or registered as a retail dealer, under the Tax Law;
 - 2. An operator of a customs bonded warehouse; and
 - 3. A government employee or agent acting in accordance with his or her official duties.
- E. “Criminal Tax Statutes” shall mean New York Tax Law §1814, and any other parts of article 37 of the New York State Tax Law or the New York State Penal Law that may apply to possession, transportation or delivery of cigarettes in New York State in packages that do not bear New York State tax stamps when required.
- F. “Tax Stamp Requirement” shall mean the requirement under the Criminal Tax Statutes that tax stamps be affixed to packages of cigarettes possessed for sale in New York State.
- G. “Tax Stamp Exception” is defined to describe those exceptions from the Tax Stamp Requirement that could foreseeably apply to possession or transportation of cigarettes by R + L, and shall include only the exceptions for lawful transport by R + L of:
 - 1. cigarettes being sold to a licensed New York stamping agent in compliance with Tax Law §471(4);

2. cigarettes being transported on behalf of a licensed New York stamping agent;
 3. cigarettes being sold to the United States; and
 4. cigarettes being sold to or by a voluntary unincorporated organization of the armed forces of the United States pursuant to government regulations and policy statements.
- H. “Topic of Investigation” shall mean the possession, sale, and transportation of untaxed cigarettes by any person, at any time, in violation of the Delivery Statute, the Criminal Tax Statutes, or related statutes.
- I. “Shippers Under Investigation” shall mean those companies that have been referenced in subpoenas served by SLDA upon R + L in 2012.
- J. “Investigation” shall mean the investigation undertaken by SLDA into the Topic of Investigation, with particular attention to conduct related to the Shippers Under Investigation and certain seizures of untaxed cigarettes from parties other than R + L in St. Lawrence County in January and February 2012.
- K. The “PACT Act” shall mean 15 U.S.C. §§ 375 *et seq.*
- L. “Relevant Statutes” shall include the Delivery Statute, the Criminal Tax Statutes, the PACT Act, and any other statute governing possession, sale or delivery of cigarettes in New York State.
- M. “Covered Period” shall mean the period from January 1, 2010, to the date this Agreement is executed.
- N. “Covered Conduct” shall mean conduct of R + L and of its officers and employees, during the Covered Period, in transporting and delivering cigarettes from, within, or into New York State, or into another state for subsequent delivery into New York State.
- O. “Related DA(s)” shall include the District Attorneys of counties into which cigarettes were delivered as part of the Covered Conduct.
- P. “Signature Date” shall mean the date on which this Agreement is signed by the later of the two parties to sign below, and “Effective Date” shall mean the date three weeks following the Signature Date.
- Q. “Signatory DAs” shall include the SLDA and any Related DA who agrees, by signing a writing in the form of Attachment C hereto on or before the Effective Date, to become party to this Agreement.
- R. “Tax Loss” shall mean the total amount of taxes that were required to be paid to New York State in connection with cigarettes within the Covered Conduct, as computed by the SLDA in good faith in consultation with R + L.

S. “Cigarette Policy” shall mean the written policy adopted in accordance with subsection IV.B below and set forth in Attachment A hereto, and as may be amended from time to time in accordance with paragraph IV.B.2.

T. “Compliance Procedures” shall mean the set of written procedures adopted in accordance with subsection IV.B below and set forth in Attachment B hereto, and as may be amended from time to time in accordance with paragraph IV.B.2.

U. “Associated Party” shall mean any entity or individual with which R + L has dealings in connection with any delivery services that it may provide, namely, its customers, consignors, and consignees.

V. “Violation” shall mean any instance in which, in connection with a shipment to, within or from the State of New York, there is reason to believe that:

1. R + L or any of its employees or agents, or any Associated Party, has knowingly or recklessly violated or attempted to violate any of the Relevant Statutes,

2. Any customer of R + L has failed to make any representation, assurance, certificate or verification as required by the Compliance Procedures, or has made a representation, assurance, certificate or verification that R + L learns is false or misleading, or

3. R + L or any of its employees or agents has knowingly or recklessly violated or attempted to violate, or any Associated Party has knowingly, recklessly or negligently caused or attempted to cause any violation of, the R + L Cigarette Policy or Compliance Procedures.

II. Contentions of the SLDA

A. R + L is a trucking company engaged in the interstate transportation of goods. It is headquartered in Wilmington, Ohio.

B. The SLDA undertook the Investigation following seizures of large quantities of untaxed cigarettes in St. Lawrence County in January and February 2012 that were shipped by companies headquartered outside New York State, using a trucking company other than R + L.

C. The Investigation has revealed that from the period from 2010 to 2013, R + L rendered trucking and delivery services to certain companies by transporting “tribal” or “native-brand” cigarettes to various counties in New York State, and also to a location in New Jersey for further transport to Suffolk County, New York State. The Investigation further revealed that the New York taxes on these cigarettes had not been paid, and that the cigarettes were in packages that did not bear New York tax stamps.

D. Cigarettes delivered into New York State may lawfully be delivered only to an Authorized Recipient.

E. Cigarettes being possessed or transported for sale in New York State must bear New York tax stamps, subject to certain limited exceptions not applicable in this matter.

F. Cigarettes at issue in this matter were unlawfully shipped into New York State, by companies headquartered outside New York State:

1. to persons in violation of the Delivery Statute, undermining the statutory system of regulation for cigarette distribution, and
2. for sale, despite a lack of tax stamps reflecting tax payments as required, resulting in a loss of substantial tax revenues to New York State, and in violation of the Criminal Tax Statutes.

III. Contentions of R + L

R + L expressly denies that it engaged in any wrongdoing; expressly denies that it has any cigarette tax liability or criminal liability under New York State law; expressly denies that it knew that the New York State taxes on the cigarettes it delivered in New York State had not been paid, or that they were being delivered to businesses that were not Authorized Recipients; and states that it would assert affirmative defenses in response to any criminal, civil or administrative claims that might be asserted against it. R + L nonetheless wishes to enter into this Agreement to avoid the delay, uncertainty, inconvenience and expense of protracted litigation and to provide finality.

IV. Compliance

A. Statutes. R + L agrees:

1. To refrain from any intentional or knowing violation of the Relevant Statutes;
2. To exercise reasonable due diligence to ensure that all its employees and agents comply with the Relevant Statutes; and
3. To exercise reasonable due diligence to avoid facilitating violation of the Relevant Statutes by any Associated Party.

B. Cigarette Policy and Compliance Procedures. R + L agrees to promptly adopt the Cigarette Policy included as Attachment A hereto and the set of Compliance Procedures included as Attachment B hereto.

1. Implementation.
 - a) Within 30 days following the effective date of this Agreement, R + L shall give public notice of its adoption of the Cigarette Policy and Compliance Procedures, including a prominent and clear notice on the R + L website. The website notice shall set forth the

Cigarette Policy in full, but it may summarize the Compliance Procedures in general terms rather than setting them forth in detail.

- b) R + L shall at all times endeavor in good faith to follow the Cigarette Policy and Compliance Procedures then in effect.
- c) R + L shall ensure that its staff is trained in the Cigarette Policy and Compliance Procedures then in effect as is reasonably calculated to ensure compliance.

2. Amendment. If at any time R + L seeks to modify the Cigarette Policy or Compliance Procedures then in effect, it may do so subject to the following process.

- a) R + L will provide a copy of the proposed amendment(s) to the SLDA.
- b) The SLDA will in good faith review and discuss the proposed amendments with R + L and may make suggestions for their revision.
- c) R + L may adopt the proposed amendments only if and when the SLDA has approved of their adoption in writing, which approval shall not be unreasonably withheld.
- d) If the SLDA neither approves nor rejects the proposed amendments within 30 days of their provision to the SLDA, R + L may implement the proposed amendments and shall not be in violation of this Agreement as a result of such implementation.

3. Violations. In case of any Violation, whether identified in the first instance by R + L, or identified by any other party that provides R + L with notice of such Violation, R + L shall:

- a) notify any party who participated in a Violation of the fact and the reason that the underlying conduct is prohibited;
- b) notify SLDA promptly and fully of the Violation; and
- c) follow its Compliance Procedures with respect to sanctions and other responses to the Violation.

C. Other policies. To the extent that R + L has any policies inconsistent with its statutory obligations as provided in subsection A above, or with its obligations under the Cigarette Policy or Compliance Procedures as provided in subsection B above, it agrees to bring such policies into conformity with the obligations undertaken by R + L herein, and in particular:

- 1. R + L shall amend its Rules Tariff (including a copy thereof that is accessible from the R + L website), and other relevant policies, so as to:

- a) set forth the Cigarette Policy and a summary of the Compliance Procedures then in effect, and
 - b) ensure that the Rules Tariff is not otherwise inconsistent with the Cigarette Policy or Compliance Procedures.
2. Thereafter, R + L shall not amend its Rules Tariff or other policies so as to render them inconsistent with the obligations undertaken by R + L herein.

V. Cooperation

A. R + L will promptly provide, as reasonably requested in writing by any Signatory DA, for purposes of criminal or civil investigations or enforcement related to the Relevant Statutes:

1. documents in its possession or control; and
2. access to all witnesses within its control for interviews or testimony, including but not limited to persons the requesting authority believes may be knowledgeable about
 - a) the Covered Conduct;
 - b) Shippers Under Investigation;
 - c) the Topic of Investigation; and
 - d) aspects of the trucking and delivery business that could be helpful in the Investigation or similar investigations, and in devising remedial measures to address conduct discovered in any such investigation.

B. The Signatory DAs agree to the following restrictions on their voluntary disclosure of documents provided by R + L:

1. These restrictions apply only to documents that are (a) provided by R + L, subsequent to the effective date of this Agreement, pursuant to section V(A)(1) above and not in response to compulsory process, and (b) are either (i) to be provided by a Signatory DA to another party for purposes of civil proceedings rather than criminal enforcement, or (ii) at the time of production by R + L are designated in writing as “confidential,” which shall mean that due to their inclusion of proprietary information, trade secrets, or other sensitive material, they would, if disclosed to private parties, likely be detrimental to commercial interests of R + L.
2. As to documents as described above, each Signatory DA agrees that:
 - a) prior to voluntarily disclosing such documents to any government agency, it shall first notify R + L and provide it a reasonable opportunity to object to the contemplated disclosure;

- b) prior to making any disclosure that it is required by law to make, it shall, unless prohibited by law, notify R + L prior to making such disclosure and provide to R + L a reasonable opportunity to object to the contemplated disclosure.

VI. Payments

- A. R + L agrees that it will make the payments described in this section.
- B. The total amount of the payments shall be \$140,000.
- C. The payments shall be made in equal amounts to the American Lung Association and the American Cancer Society (the “Non-Profit Organizations”).
- D. The payments shall be divided into amounts to be used by the Non-Profit Organizations in the counties of Signatory DAs as follows:
 - 1. One fifth of the total payments shall be used by the Non-Profit Organizations in St. Lawrence County.
 - 2. The balance of the total payments shall be divided into amounts to be used by the Non-Profit Organizations in the counties of Signatory DAs as follows: for use in any county to which cigarette deliveries in the Covered Conduct represented less than 8% of the Tax Loss, 8% of the balance of the total payments; for use in any county to which cigarette deliveries in the Covered Conduct represented between 8% and 16% of the Tax Loss, 14% of the balance of the total payments; for use in any county to which cigarette deliveries in the Covered Conduct represented between 16% and 32% of the Tax Loss, 20% of the balance of the total payments; and for use in any county to which cigarette deliveries in the Covered Conduct represented more than 32% of the Tax Loss, 34% of the balance of the total payments, provided that the shares of any Related DAs who do not become Signatory DAs will be re-allocated to the Signatory DAs in the same proportions as provided in this subsection D. If the sum of these allocations exceeds 100% of the balance, they shall each be reduced in equal proportion so that the sum of the allocations equals 100%.
- E. The payments to the Non-Profit Organizations shall be made by 30 days following the Effective Date of this Agreement.

VII. Undertakings by the Signatory DAs

- A. Each Signatory DA agrees that if R + L fully complies with its obligations under this Agreement, then such Signatory DA will not prosecute R + L for the Covered Conduct.
- B. If R + L fully complies with its obligations under this Agreement, then upon request of R + L:

1. The SLDA will inform any other agency of the terms of this Agreement and the nature and scope of cooperation by R + L pursuant hereto, and
2. To the extent consistent with requirements of grand jury secrecy, SLDA will inform the New York State Department of Taxation and Finance of SLDA's investigatory and enforcement efforts, with respect to the Covered Conduct and the Tax Loss, as to parties other than R + L.

VIII. Other obligations

A. Certification. A lawyer in R + L's legal department shall certify in a signed writing to SLDA, between January 1 and January 31 of each year during which this Agreement remains in effect, whether R + L has, to the best of its knowledge, been in compliance with all the terms of this Agreement throughout the preceding calendar year.

B. Communication. R + L and SLDA shall each provide the other with the name and contact information of a person to whom all communications under this Agreement may and should be sent, and either party may amend such information from time to time upon reasonable notice to the other.

C. Legal positions

1. Solely for purposes of this Agreement and subject to circumstances stated in paragraph 3 below, R + L accepts the following legal positions as correct statements of law:

- a) The Delivery Statute validly prohibits delivery of cigarettes by common carriers or any other party to any New York State individual or business that is not an Authorized Recipient; and
- b) Under valid New York State law, cigarettes transported or offered for sale in New York and not within a Tax Stamp Exception must bear New York tax stamps irrespective of whether the cigarettes are manufactured, sold, or purchased by an Indian tribe or an instrumentality thereof.

2. Within any jurisdiction of, or contained within, the geographic jurisdiction of any Signatory DA, R + L will not take positions in any criminal matter or criminal court that are contrary to the above positions.

3. R + L's obligations set forth in paragraphs 1 and 2 above apply only with respect to Signatory DAs and will cease to apply if and when a court of competent jurisdiction holds contrary to any of the legal positions stated in paragraph 1, but in that case shall cease to apply only to the extent of such holding and only within the geographic jurisdiction of such court.

IX. Revocation

A. If the SLDA in good faith determines at any point that R + L is responsible for any material violation of this Agreement, then the SLDA may inform R + L of that determination in writing. R + L shall have a reasonable opportunity to respond to the SLDA's notification and to cure any alleged noncompliance. Should the SLDA conclude in good faith that such noncompliance cannot be, or is not being, cured, the SLDA may revoke this Agreement, in which case any of the Signatory DAs will be free to prosecute R + L for any and all criminal offenses deemed appropriate, and this Agreement shall be null and void. Circumstances justifying revocation include any material breach of R + L's obligations as set forth in any of sections IV, V, VI, or VIII above, except that revocation may not be based on section IV(A) unless the breach includes violation of some obligation under the law of New York State.

B. For purposes of any prosecution under subsection A, the Signatory DA may prosecute any matter that such DA would have been able to prosecute as of July 1, 2013, and R + L hereby waives statutes of limitations and speedy trial rights to that extent.

X. General provisions

A. This Agreement embodies the entire Agreement between the parties hereto. It may not be modified or revoked except as provided herein or by subsequent written agreement of the SLDA and R + L.

B. The only governmental agencies bound by this Agreement are the Signatory DAs. This Agreement cannot and does not bind any authorities of the federal government or any State other than New York, nor any New York State or local agency other than the Signatory DAs.

C. No exemption from PACT Act: The State of New York is not a party to this Agreement, and this Agreement does not operate throughout the United States. The parties understand and acknowledge that this Agreement is not within the scope of 18 U.S.C. §376a(e)(3)(B)(ii)(II), and does not make any portion of the PACT Act inapplicable to R + L.

D. Public information: The parties understand and agree that:

1. Attachment B to this Agreement is confidential and will not be publicized or disclosed by the Signatory DAs except to the extent necessary to comply with legal obligations or to pursue legitimate law enforcement activities.

2. This Agreement, other than Attachment B, is not confidential and may be publicized by any party.

3. R + L will not make any public statements that disagree with or criticize this Agreement or any provisions or representations contained herein.

- E. This Agreement hereto may be signed in counterparts. This Agreement and Attachment C hereto may be transmitted electronically with signature.
- F. This Agreement shall become effective on its Effective Date, and within two weeks after the Effective Date, SLDA will provide R + L with a list of the Signatory DAs.
- G. This Agreement shall remain in force from its Effective Date until January 31, 2017, unless revoked in accordance with section IX.A above; provided that if within that period SLDA notifies R + L of any knowing or reckless violation of this Agreement, then the Agreement shall remain in force until January 31, 2019.
- H. Headings as to the contents of particular sections are for convenience only and are in no way to be construed as part of this Agreement.
- I. This Agreement and the negotiations leading thereto are not intended to be admissible into evidence for any purpose in any criminal or civil action, and are not admissions by any party of any issue of fact or law except as expressly provided herein.
- J. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.
- K. Notices required or authorized to be provided pursuant to this Agreement shall be sent to the following persons:

To the SLDA:

Nicole M. Duvé
District Attorney
St. Lawrence County
48 Court St.
Canton, New York 13617

with a copy to:

Steve Krantz
Special ADA, St. Lawrence County
New York State Department of Taxation & Finance
W.A. Harriman Campus – Building 8
Albany, New York 12227

To R + L:

Daniel J. Brake
Associate General Counsel
R + L Carriers
600 Gillam Road
Wilmington, Ohio 45177

with copies to:

Norman A. Bloch
Thompson Hine LLP
335 Madison Avenue
New York, New York 10017

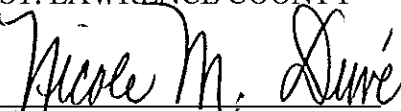
and

James M. Roberts
Thompson Hine LLP
335 Madison Avenue
New York, New York 10017

AGREED AND EXECUTED by the parties hereto:

Dated: ~~August~~ __, 2013 DISTRICT ATTORNEY
ST. LAWRENCE COUNTY

September 3, 2013


NICOLE M. DUVE

Dated: August __, 2013 GREENWOOD MOTOR LINES, INC.
d/b/a R + L CARRIERS

By: _____
DANIEL J. BRAKE
ASSOCIATE GENERAL COUNSEL

with copies to:

Norman A. Bloch
Thompson Hine LLP
335 Madison Avenue
New York, New York 10017

and

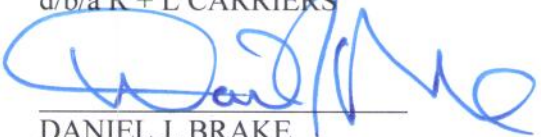
James M. Roberts
Thompson Hine LLP
335 Madison Avenue
New York, New York 10017

AGREED AND EXECUTED by the parties hereto:

Dated: August ____, 2013 DISTRICT ATTORNEY
ST. LAWRENCE COUNTY

NICOLE M. DUVÉ

Dated: August 23 2013 GREENWOOD MOTOR LINES, INC.
d/b/a R + L CARRIERS

By: 

DANIEL J. BRAKE
ASSOCIATE GENERAL COUNSEL

AGREEMENT BY SIGNATORY DISTRICT ATTORNEYS

The undersigned District Attorney, having reviewed the “Agreement with R + L Carriers as to Transportation of Cigarettes in New York State,” as executed by Greenwood Motor Lines, Inc. d/b/a R + L Carriers (“R + L”), and the District Attorney of St. Lawrence County, executed by the former on August 23, 2013 (“the Agreement”), and so as to realize benefits of undertakings and obligations imposed on R + L by sections IV, V, VI and VIII of the Agreement, hereby agrees to be bound by the undertakings and obligations imposed on Signatory DAs by section VII of the Agreement, and thus agrees to be party to the Agreement as a Signatory DA as defined in Part I(Q) of the Agreement.

Dated: September 9, 2013

DISTRICT ATTORNEY
CHAUTAUQUA COUNTY



David W. Foley

AGREEMENT BY SIGNATORY DISTRICT ATTORNEYS

The undersigned District Attorney, having reviewed the “Agreement with R + L Carriers as to Transportation of Cigarettes in New York State,” as executed by Greenwood Motor Lines, Inc. d/b/a R + L Carriers (“R + L”), and the District Attorney of St. Lawrence County, executed by the former on August 23, 2013 (“the Agreement”), and so as to realize benefits of undertakings and obligations imposed on R + L by sections IV, V, VI and VIII of the Agreement, hereby agrees to be bound by the undertakings and obligations imposed on Signatory DAs by section VII of the Agreement, and thus agrees to be party to the Agreement as a Signatory DA as defined in Part I(Q) of the Agreement.

Dated: September 20, 2013

DISTRICT ATTORNEY
FRANKLIN COUNTY


Derek P. Champagne

AGREEMENT BY SIGNATORY DISTRICT ATTORNEYS

The undersigned District Attorney, having reviewed the "Agreement with R + L Carriers as to Transportation of Cigarettes in New York State," as executed by Greenwood Motor Lines, Inc. d/b/a R + L Carriers ("R + L"), and the District Attorney of St. Lawrence County, executed by the former on August 23, 2013 ("the Agreement"), and so as to realize benefits of undertakings and obligations imposed on R + L by sections IV, V, VI and VIII of the Agreement, hereby agrees to be bound by the undertakings and obligations imposed on Signatory DAs by section VII of the Agreement, and thus agrees to be party to the Agreement as a Signatory DA as defined in Part I(Q) of the Agreement.

Dated: September 23, 2013

DISTRICT ATTORNEY
SUFFOLK COUNTY



Thomas J. Spota