

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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ERIE COUNTY
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SENECA NATION OF INDIANS,

PLAINTIFF,

v.

ORDER TO SHOW CAUSE

THE STATE OF NEW YORK,
THE NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE,
THOMAS H. MATTOX,
ACTING COMMISSIONER OF THE
DEPARTMENT OF TAXATION
AND FINANCE, ERIC T. SCHNEIDERMAN,
NEW YORK STATE ATTORNEY GENERAL,

DEFENDANTS.

INDEX No. 2011-000714

PRESENT: Hon. Donna M. Siwek, Justice of the Supreme Court.

UPON the annexed Affirmation of Christopher L. Karns, dated May 10, 2011; and the Memorandum of Law submitted herewith; together with all prior pleadings and proceedings had herein, it is hereby:

ORDERED that Defendants the State of New York, the New York State Department of Taxation and Finance, Thomas H. Mattox, acting Commissioner of the Department of Taxation and Finance, and Eric T. Schneiderman, New York State Attorney General ("Defendants"), Show Cause before a Special Term of the Supreme Court of the State of New York, County of Erie, to be held in Part 29, Eighth Floor, 50 Delaware Avenue, Buffalo, New York, 14202, on the 1st day of June, 2011 at 2 o'clock in the after noon of that day, or as soon thereafter as counsel may be heard, why an Order should not be made and entered pursuant to CPLR § 6301 granting Plaintiff Seneca Nation of Indians ("the Nation") the following relief pending final

disposition of this action:

- (A) enjoining Defendants from implementing or enforcing regulations adopted by the Department of Taxation and Finance on November 10, 2010, 20 N.Y.C.R.R. § 74.6, during the pendency of this litigation;
- (B) enjoining Defendants from implementing or enforcing the June 2010 amendments to sections 471 and 471-e of the New York Tax Law related to the taxation of cigarettes on Indian territory in the absence of validly promulgated regulations during the pendency of this litigation; and
- (C) awarding Plaintiff such other and further relief as to the Court may seem just and proper; and it is hereby

ORDERED, that until the final determination of Plaintiff's application for an Injunction, the Defendants, along with their agents, employees and all other persons acting in concert or cooperation therewith, are temporarily restrained and enjoined from implementing, administering, and enforcing N.Y. Tax Law §§471(1), (2), (5) related to the taxation of cigarettes on Indian territory, N.Y. Tax Law §47 1-e, and 20 N.Y.C.R.R. §74.6, pending further order of this Court,

SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order and of the above-listed papers upon which the same is granted, made upon counsel for Defendants by hand-delivery, fax, or e-mail, on or before May 11, 2011, be deemed good and sufficient service; and it is further

ORDERED, that any responsive papers shall be filed with the Court and delivered to counsel for the Plaintiff no later than May 20, 2011, and it is further

ORDERED, that Plaintiff's reply papers, if any, shall be filed with the Court and delivered to counsel for the Defendants no later than May 27, 2011.

HON. DONNA M. SIWEK, J.S.C.

Hon. Donna M. Siwek, J.S.C.

ENTER: _____

GRANTED

MAY 10 2011

BY JOAN AQUILA
JOAN AQUILA
COURT CLERK