

At a Special Term of the
Supreme Court, County of Erie,
Part 29, State of New York on the
1st day of June, 2011

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

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SENECA NATION OF INDIANS

PLAINTIFF,

v.

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. 11-714
Hon. Donna M. Siwek, J.S.C.

FILED
JUN 1 2011
ERIE COUNTY
CLERK'S OFFICE

ORDER

NOW, the plaintiff, the Seneca Nation of Indians (“Plaintiff”), having moved this Court for an order: 1) granting its Motion for Summary Judgment, pursuant to Rule 3212 of the New York Civil Practice and Rules; 2) granting its Motion for a Preliminary Injunction, pursuant to CPLR 6301; and 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 (collectively, “Defendants”) having opposed both motions; and Defendants having Cross-Moved for Summary Judgment, pursuant to CPLR 3212;

KBR UPON reading the Notice of Motion for Summary Judgment, dated April 25, 2011; the Affidavit of Christopher Karns, with attached exhibits, sworn to April 21, 2011, all in support of the Nation's Motion for Summary Judgment; and the *Order to Show Cause* ~~Notice of Motion for Preliminary~~ *granted* ~~Injunction, dated~~ May 10, 2011; and the Affidavit of Christopher Karns, with attached exhibits, sworn to May 10, 2011, all in support of Plaintiff's Motion for Preliminary Injunction; and

UPON reading the Notice of Cross-Motion for Summary Judgment, dated May 19, 2011; the Affirmation of Andrew D. Bing, with attached exhibits, dated May 19, 2011; the Affirmation of Robert D. Plattner, with attached exhibits, dated May 18, 2011, all in opposition to Plaintiff's Motions for Summary Judgment and Preliminary Injunction, and in support of Defendants' Cross-Motion for Summary Judgment;

DMS AND, this matter having come on to be heard on June 1, 2011, and Harter Secrest & Emery LLP (Carol E. Heckman, of counsel) having appeared for the Seneca Nation of Indians and *ERIC T SCHNEIDERMAN,* the Attorney General of the State of New York (*Deputy* Andrew D. Bing, *assistant* Solicitor General) *of Counsel* having appeared for Defendants; it is hereby

ORDERED, that Plaintiff's Motion for Summary Judgment is denied; and it is further

ORDERED, that Defendants' Cross-Motion for Summary Judgment is granted; and it is further,

Further **ORDERED**, that Plaintiff's Motion for Preliminary Injunction is denied as moot, *AND IT IS* *ordered, that the Temporary Restraining Order of May 10, 2011,* *is hereby lifted.*

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

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

GRANTED

JUN 08 2011

BY JOAN AQUILA

JOAN AQUILA
COURT CLERK