

*Please Expedite*

*Reply, by 4/9*

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Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

At a Motion Term of the Appellate Division  
of the Supreme Court of the State of New  
York, Second Department, at the  
Courthouse located at 45 Monroe Place,  
Brooklyn, New York on the \_\_\_\_ day of  
March, 2010

~~PRESENT~~

~~H~~ \_\_\_\_\_  
Justice

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LONG ISLAND GASOLINE RETAILERS  
ASSOCIATION, INC., NEW YORK STATE  
ASSOCIATION OF SERVICE STATIONS AND  
REPAIR SHOPS, INC., NEW YORK ASSOCIATION  
OF CONVENIENCE STORES, SERVICE STATION  
DEALERS OF GREATER NEW YORK, INC. and  
UNITED 7-ELEVEN FRANCHISE OWNERS OF  
LONG ISLAND AND NEW YORK,

Nassau County  
Index No. 18800/09

Appellate Division  
Docket No. 2010-02651

**ORDER TO SHOW CAUSE**

Plaintiffs-Appellants,

- against -

DAVID A PATERSON, in his official capacity as  
Governor of the State of New York, ANDREW M.  
CUOMO, in his official capacity as Attorney General  
of the State of New York and JAMIE WOODWARD,  
in her official capacity as Acting Commissioner of the  
New York State Department of Taxation and Finance,

Defendants-Respondents.

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APPPELLATE DIVISION  
SECOND DEPARTMENT

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Upon reading and filing the annexed Affirmation of Andrew E. Curto, Esq. dated  
March 18, 2010 together with the exhibits annexed thereto, the Notice of Appeal dated March  
18, 2010, the Short Form Order of the Supreme Court, County of Nassau (Feinman, J.) dated  
March 10, 2010, denying Appellants' motion for a preliminary injunction on the grounds that  
Appellants lack standing, and after hearing the arguments of counsel for the continuation of a  
temporary restraining order, let the Defendants-Respondents show cause before the Supreme

(X)

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Court of the State New York, Appellate Division, Second Department at the Courthouse thereof located 45 Monroe Place, Brooklyn, New York on March <sup>11, 2010</sup> ~~31~~ <sup>st</sup>, 2010, why an Order should not be made and entered pursuant to CPLR §§ 5518<sup>1A</sup> and 5519(c) providing that, pending the hearing and determination of Plaintiffs-Appellants' appeal from the aforesaid March 10, 2010 Short Form Order, (i) Defendants-Respondents be enjoined and restrained from implementing or enforcing New York Tax Law § 480-a(2)(a)(ii), as amended by L. 2009 Chapter 58 Pt. C, § 125 (effective April 7, 2009, deemed effective April 1, 2009)(collectively, the "Statute"), which Statute, as amended, modifies the amounts/payments due to the New York State Department of Taxation and Finance on and after the effective date thereof; (ii) Plaintiffs-Appellants, their members and others similarly situated be permitted to continue submitting for processing and approval to the New York State Department of Taxation and Finance, Form DTF-719-MN, more particularly described as a *Renewal Application For The Registration Of Retail Dealers And Vending Machines For Sales Of Cigarettes And Tobacco Products*, in a format as used by the New York State Department of Taxation and Finance for the registration period January 1, 2009 through December 31, 2009 which required the registration application payment of \$100.00 per store location, in contrast to the sliding scale payments sought to be imposed under the above-referenced Statute, as amended; and (iii) the New York State Department of Taxation and Finance, during the pendency of this appeal, be directed to process and approve the aforesaid renewal applications based on use of form DTF-719-MN upon receipt thereof accompanied by the \$100.00 registration application payment as existed prior to adoption of the Statute, as amended, and issue the appropriate Retail Dealers Certificates and Vending Machine Certificates for the sale of cigarettes and tobacco products to the respective applicants complying with the

provisions of said form and \$100 payment so as to allow each such registrant the ability to sell tobacco products in New York State during the pendency of the instant appeal.

Sufficient cause appearing therefor, it is hereby

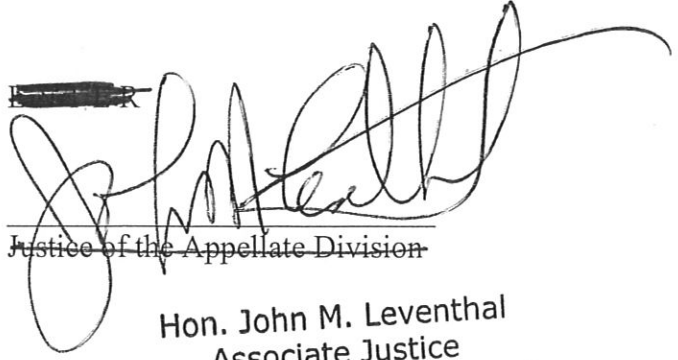
**ORDERED** that pending the hearing and determination of this Order to Show Cause, Defendants David A. Paterson, in his official capacity as Governor of the State of New York, Andrew M. Cuomo, in his official capacity as Attorney General of the State of New York and Jamie Woodward, in her official capacity as Acting Commissioner of the New York State Department of Taxation and Finance are hereby:

- (i) Stayed and enjoined from taking any action to implement or enforce New York Tax Law §480-a(2)(a)(ii), as amended, and its new payment schedule/structure; and
- (ii) Directed to allow Appellants, their members and other similarly situated to submit for processing and approval New York State Department of Taxation and Finance Form DTF-719-MN, described as a *Renewal Application For The Registration Of Retail Dealers And Vending Machines For Sale Of Cigarettes And Tobacco Products* together with the registration and application payment of \$100.00 so as to allow Appellants, their members and others similarly situated to maintain the status quo of their registration to sell tobacco products until a determination of the instant motion.

Sufficient cause appearing therefor, let service of a copy of the instant Order to Show Cause, together with the papers upon which it is based, by Federal Express or other overnight delivery courier service, to the New York State Attorney General's office located at 200 Old Country Road, Suite 240, Mineola, New York 11501, to the attention of Ralph Pernick, Esq., Assistant Attorney General, who has handled this matter on behalf of the Respondents in

the Court below, on or before the 19<sup>th</sup> day of March, 2010 be deemed good and sufficient service thereof.

Dated: Brooklyn NY  
March 19, 2010

A handwritten signature in black ink, appearing to read "John M. Leventhal", written over a horizontal line. The signature is stylized and cursive.

~~Justice of the Appellate Division~~

Hon. John M. Leventhal  
Associate Justice  
Appellate Division 2nd Dept.