

At an Individual Assignment Part 18 of the Supreme Court, State of New York, County of Nassau, at the Courthouse, 100 Supreme Court Drive, Mineola, New York on the 16th day of September, 2009.

PRESENT: Honorable Thomas Feinman
J.S.C.

MOTION SEQUENCE # 01
ORIGINAL RETURN DATE _____
RELIEF OPT

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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,

Plaintiffs,

FEINMAN

Index No.: 09-018800

**ORDER TO SHOW CAUSE
SEEKING TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

-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.
----- X

Upon reading and filing the annexed Affirmation of Andrew E. Curto, dated September 15, 2009; the Affidavit of Peter Conely, sworn to on the 11th day of September, 2009; the Affidavit of Tariq Khan, sworn to on the 11th day of September, 2009; the Memorandum of Law dated September 15, 2009; and upon the Verified Complaint, together with the supporting

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exhibits annexed hereto;

LET the 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, Show Cause before the Supreme Court of the State of New York, County of Nassau, at the Courthouse located at 100 Supreme Court Drive, Mineola, New York, before Hon. Thomas Feinman, J.S.C., at IAS Part on 10/15/09, at 9:30 a.m., or as soon thereafter as counsel may be heard, why an Order should not be issued:

1. Granting Plaintiffs a Temporary Restraining Order and preliminary injunctive relief enjoining the Defendants from implementing or enforcing N.Y. 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), which provision modifies the fee structures of the statute;

2. Allowing Plaintiffs and their members and others so similarly situated to submit for processing 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 fee of \$100.00 per store location, in contrast with the sliding scale registration application fees as sought to be imposed under N.Y. State Tax Law §480-a(2)(a)(ii); and

3. That the New York State Department of Taxation and Finance during the

pendency of this action shall process the aforesaid Renewal Application Form DTF-719-MN upon receipt thereof with the \$100.00 registration application fee and issue the appropriate Retail Dealers Certificates and Vending Machine Certificates for the sale of cigarettes and tobacco products to the respective applicant so as to allow each such registrant the ability to sell tobacco products in New York State during the pendency of this action.

SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY

ORDERED, that pending the determination of this Order to Show Cause, or further Order of this Court, 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:

STAY

(1) 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 fee structure; and

Upon the consent of the parties,

(2) ^{are allowed} Directed to allow Plaintiffs and their members and others similarly

cc: JSC

situated to submit for processing 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 Sales of Cigarettes and Tobacco Products*, together with the registration

application fee of \$100.00 so as to allow Plaintiffs and their members and others similarly

situated to maintain the *status quo* of their registration to sell tobacco products ^{until a determination} during the pendency of this action. ^{of the instant application.}

and Summons and ^{VERIFIED} Complaint With Index Number and Filing Date Endorsed Thereon
LET service of a copy of this Order to Show Cause, together with the papers upon

which it is based, and the Verified Complaint upon the New York State Attorney General's

office located at 200 Old Country Road, Suite 240, Mineola, New York 11501, Att: Ralph

9/17 Pernick, Esc. - Assistant Attorney General, by overnight courier on or before the _____ day of September, 2009 shall be deemed good and sufficient service thereof.

Parties ^{have} consented to service of the application.

ENTER:



J.S.C.

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