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MTA payroll tax draws lawsuit

BY CHRIS MILLER

The Metropolitan Transportation Authority (MTA) announced in May 09 that a payroll tax would be imposed on employers throughout the region where the train lines run. Further, the MTA said that the tax would be due and payable in November 09, which would also be retroactive from March 09.

The tax has been estimated to collect \$1.35 billion from employers in the nine month period beginning this past March.

William Schoolman, Principal of Hampton Luxury Liner and Schoolman Transportation System, Inc in Bohemia, NY and his Attorney Joseph N. Campolo of Campolo, Middleton & Associates have filed a lawsuit to halt the MTA Payroll Tax.

Campolo said the suit details six causes of action, which also demands refunds by the MTA for whatever has been paid by employer taxpayers. The lawsuit names as defendants the New York State Department of Taxation and Finance, the MTA, New York Governor David Paterson, New York State Assembly Speaker Sheldon Silver, New York State Senate President Malcolm Smith, and New York State Comptroller Thomas DiNapoli in New York State Supreme Court.

Campolo said his client transports his customers from NYC to the Hamptons and from NYC to Woodbury Commons and that he competes with both Metro North and Long Island Railroad, which are under the MTA.

"This is now the ninth tax that he, as a transportation company, is required to pay to the MTA," expressed Campolo. "In essence, by paying this tax, he is subsidizing his competition."

Schoolman's attorney said that the payroll tax was very rushed. Paterson proposed the bill and the legislature enacted the tax as law in less than one day – no vetting, no debate, and no public hearings.

When contacted in light of the lawsuit, both Governor Paterson's office and Assemblyman Sheldon Silver declined to comment about questions concerning the payroll tax and the lawsuit.

"We took a look at the procedural aspects of how the governor and the legislature enacted the bill and we found that it is in violation of the New York State Constitution," explained Campolo. "The constitution requires that a special law in the state requires a two-third vote for passage as a law. This bill did not receive the required two-thirds vote. They classified it as a general law when in actuality it is a special law because it affects only a local portion of the state."

He added that the payroll tax is also in vio-

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MTA payroll tax

lation of NYS Constitution because it explicitly reads that the state is not permitted to accept or guarantee the debts of the MTA or any other public corporation.

"It is clear that this tax is imposed as a bailout, specifically, so the state can pay off the debt of the MTA," Campolo stated.

He said that Schoolman is asking the questions and doing the job our political leaders should have done concerning the employer payroll tax.

Schoolman said he has been competing against the MTA for a long time and that the MTA is an example of a failed business model. He said he feels the transportation authority is fiscally irresponsible and has brought problems upon themselves.

"There are 800 authorities in New York

State and I believe the MTA is, by far, the best example of New York State government at its absolute worst," expressed Schoolman. "I feel that the MTA bailout is illegal and unconstitutional and the authority concept is not going to be rescued by this bailout. No bailout is going to save the MTA and enough is enough right this minute."

Schoolman added that he believes the payroll tax could have been avoided if an authority was not the business model providing transportation services.

Campolo stated that the lawsuit has been filed due to the governor's and the legislature's failing to seriously address fixing the problem by irresponsibly and improperly throwing \$1.8 billion of the taxpayers money at the MTA.

"In an article last week it showed that New York State is last in the nation in entrepreneurship and starting new businesses. Even worse, New York ranks first in the nation for business failures, with taxes sighted as the biggest reason," Campolo explained.

The tax removes valuable dollars out of the hands of employers like Schoolman who could use the money to hire and train employees. The additional \$20,000 Schoolman will be paying will prevent him from implementing a driver safety training program, which he planned for the coming new year.

"The MTA being incompetent isn't new news it's the fact that our elected officials give our taxpayer dollars away in an unconstitutional manner and refuse to

look at the problem seriously," expressed Campolo.

Schoolman said that the Bus Association of New York (BANY) is supporting the lawsuit brought against the aforementioned defendants, as well as is the United Motorcoach Association (UMA).

"But this is not just a transportation company issue. It's every taxpayer's issue," he said.

Pattern for Progress is helping to coordinate efforts by many of the region's chambers and business associations and councils. Pattern President and CEO Jonathan Drapkin said a new angle to the payroll tax seems to develop every day, citing Poughkeepsie-based State Senator Steve Saland's legislation requesting for the State of Connecticut to pay more and Long Island State Senator Foley's legislation calling for the payroll tax to be scaled back.

"There are various actions being contemplated by counties as to what they could do and they come at it a little differently," explained Drapkin. "In Rockland and Orange the payroll tax made a bad situation worse."

He said if the amount of taxation and fees that are collected in the two counties to support the MTA are contrasted to the value of the services that it is evident that they receive far less service than what they pay.

"For Rockland and Orange, it is most clearly measured in this value gap as to why the payroll tax is so unfair," Drapkin said.

In counties like Dutchess and Putnam it's a slightly different argument. Both these counties have the sense that the payroll tax is grossly unfair because it was imposed in counties that received relatively little amounts of service.

"It was imposed on not-for-profits and small businesses that had virtually no connection to the world of the MTA," expressed Drapkin.

He stated the payroll tax story continues to become more complicated because the MTA kept announcing over the course of the last couple of weeks that they have yet another budget deficit.

"The one thing that I think you could find unanimity among the Hudson Valley is that the MTA shouldn't be looking to the counties to keep bailing them out," he said. "The ultimate goal is to make the payroll tax go away. This tax was wrong from the beginning. It clearly didn't recognize what the distinction and difference was as to how the MTA delivered services in these four counties."

Drapkin said the MTA should adopt the zone basis, which many other cities like Washington, D.C. and London use to pay for services. London's subway fare ranges from \$2.20 to \$20.00, dependent upon how far the commuter travels.

"Yet, New York City resists it," he expressed. "New York City resists tolls on the East River bridges and in this day of high speed E-Z Pass, someone really has to explain why tolls can't go on those bridges. Hudson Valley residents going into the city go over the Tappan Zee and they sure pay tolls. What this comes down to for many people is a question of fairness and equity."

New York State Senate President Malcolm Smith and New York State Comptroller Thomas DiNapoli failed to respond to questions concerning the MTA payroll tax and the lawsuit filed against them by Schoolman.

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