

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF SUFFOLK

-----X
HAMPTON TRANSPORTATION VENTURES, INC.
d/b/a HAMPTON LUXURY LINER, and
SCHOOLMAN TRANSPORTATION SYSTEM, INC.,
d/b/a CLASSIC COACH

Plaintiffs,

- against -

**VERIFIED
COMPLAINT**

Index No: 09-45760

Purchased: 12/14/09

SHELDON SILVER in his official capacity as Speaker of the New York State Assembly; MALCOLM A. SMITH in his official capacity as Temporary President of the New York State Senate; THE STATE OF NEW YORK; DAVID A. PATERSON in his official capacity as the Governor of the State of New York; THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE; JAMIE WOODWARD, in his official capacity as Acting Commissioner of the New York State Department of Taxation and Finance; THOMAS P. DINAPOLI, in his official capacity as the Comptroller of the State of New York; the METROPOLITAN TRANSPORTATION AUTHORITY; JAY H. WALDER in his official capacity as Commissioner of the Metropolitan Transportation Authority;

Defendants.

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NATURE OF THE ACTION

This action challenges the constitutionality of the recent enactment by the New York State Legislature of Chapter 25 of the 2009 Session Laws of New York (the "MTA Tax Bill") which imposes a variety of taxes and fees within the Metropolitan Commuter Transportation District ("the MCTD"), appropriates and directs the revenue to the Metropolitan Transportation Authority ("the MTA"), and establishes purported internal governance reforms for the MTA. This legislative bailout arises out of the MTA's extreme waste and inefficiency, which has been improperly condoned with repeated infusions of taxpayer money. The statute which formed the

MTA requires it to be self-sustaining, and to this end, the MTA was given broad powers to collect fares and issue debt. In spite of this self sustaining requirement, the MTA has received revenue from numerous improper taxes and other subsidies, while it continued to pay extravagant salaries, issue enormous amounts of debt and engage in financially questionable practices that continue to drain taxpayer dollars. In May 2009, in response to a looming \$1.8 billion MTA deficit, the State Legislature agreed to bail out the MTA by granting additional taxes and fees to benefit the MTA. Upon information and belief, the process and substance of the new legislation violated several New York State Constitutional requirements including the need for a Home Rule Message, failure to pass the state legislature by a two-thirds affirmative vote, failure to use separate bills for appropriations and unrelated purposes, the state's guarantee of the debts of a public authority, and violation of the MTA's self sustaining requirement. Accordingly, plaintiffs, by and through their attorneys, Campolo, Middleton & Associates LLP do hereby complain of defendants as follows:

PARTIES

1. Plaintiff Hampton Transportation Ventures, Inc, d/b/a Hampton Luxury Liner, is a New York corporation, with a principal place of business in Suffolk County, New York, located at 1600 Locust Avenue, Bohemia, New York 11716, a location within the MCTD. Plaintiff Hampton Luxury Liner ("HLL") operates a luxury coach bus service between Manhattan and various locations in Suffolk County, New York. HLL is an employer who engages in business within the MCTD and had a payroll expense in excess of two thousand five hundred dollars in each calendar quarter of 2009, and as such, is subject to the tax of thirty four hundredths of a percent of HLL's payroll expense, imposed on employers under the MTA Tax Bill. HLL is an entity directly aggrieved by the MTA Tax Bill.

2. Plaintiff Schoolman Transportation System, Inc., d/b/a Classic Coach, is a New York corporation, with a principal place of business in Suffolk County, New York, located at 1600 Locust Avenue, Bohemia, New York 11716, a location within the MCTD. Plaintiff Classic Coach (“Classic”) operates a luxury coach bus service and charter service on various routes throughout Long Island, New York City, and the North East United States. Classic is an employer who engages in business within the MCTD and had a payroll expense in excess of two thousand five hundred dollars in each calendar quarter of 2009, and as such, is subject to the tax of thirty four hundredths of a percent of Classic’s payroll expense, imposed on employers under the MTA Tax Bill. Classic is an entity directly aggrieved by the MTA Tax Bill.

3. Defendant Sheldon Silver is the Speaker of the New York State Assembly, and is named in his official capacity. As Speaker, Defendant Silver is a principal officer of the State Assembly, which passed the MTA Tax Bill on May 6, 2009, the same day on which it was introduced, by a vote of 86 in favor to 56 opposed, an affirmative vote of 60%.

4. Defendant Malcolm A. Smith is the Temporary President of the New York State Senate, and is named in his official capacity. As Temporary President, Mr. Smith is a principal officer of the State Senate, which passed the MTA Tax Bill on May 6, 2009, the same day on which it was introduced, by a vote of 32 in favor to 29 opposed, an affirmative vote of 52%.

5. Defendant New York State Department of Taxation and Finance (“DTF”) is an agency of the State of New York organized under Section 170 of the Tax Law. It maintains offices at 1740 Broadway, New York, New York, as well as at the State Capital, Albany, New York. DTF is responsible for administering and enforcing the tax laws of New York State, including those added or amended by the MTA Tax Bill.

6. Defendant Jamie Woodward is the acting commissioner (the “Commissioner”) of the New York State Department of Taxation and Finance, and is named in his official capacity. As the principal officer of the DTF, the Commissioner is responsible for administering and enforcing the tax laws of New York State, including those tax laws which were added or amended by the MTA Tax Bill.

7. Defendant State of New York is organized under the New York Constitution.

8. Defendant David Paterson is the Governor of the State of New York, and is named in his official capacity. The Governor maintains an office at 633 Third Avenue, New York, New York, as well as at the State Capital, Albany, New York. As the State’s Chief Executive Officer, the Governor is responsible for executing the laws of New York State. The Governor gave the MTA Tax Bill a Message of Necessity on May 6, 2009, and signed the MTA Tax Bill into law on May 7, 2009.

9. Defendant Metropolitan Transportation Authority (“MTA”) is a domestic government corporation and public authority registered with the New York Secretary of State on June 1, 1965, which operates facilities throughout the MCTD and which has its principle place of business in New York County at 347 Madison Avenue, New York, New York, 10017.

10. Defendant Jay H. Walder (“Walder”) is Chair and Commissioner of the Metropolitan Transportation Authority and is named in his official capacity.

11. Defendant Thomas P. DiNapoli is the New York State Comptroller, and is named in his official capacity.

JURISDICTION, VENUE AND STANDING

12. This action is equitable in nature and plaintiffs are not required to file a Notice of Claim prior to commencing this action.

13. This Court has jurisdiction pursuant to N.Y. C.P.L.R. §3001.

14. Plaintiffs herein seek a declaratory judgment as to the legal relations of the parties pursuant to C.P.L.R. §3001 and the New York State Finance Law, §123-b.

15. Venue is proper in Suffolk County pursuant to Section 123-c(1) of the New York State Finance Law because disbursements for and related to the operation of the MTA are made in this county.

16. Venue in this declaratory judgment action is also proper in Suffolk County pursuant to CPLR 503(c) because it is the county in which the principal offices of both plaintiffs are located, and pursuant to CPLR 505(a) as a county in which the defendant MTA maintains facilities involved in this action.

STATUTES AT ISSUE

(Statutes Relating to the First and Second Causes of Action)

17. The New York State Constitution sets a higher standard for passing certain laws which affect less than the entire State of New York.

18. The distinction between laws which affect the entire state and laws which affect only a portion of the state is stated in Article IX Section 3 paragraph (d) of the New York State Constitution, which provides in pertinent part:

“(d) Whenever used in this article the following terms shall mean or include:

(1) “General law.” A law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.

(4) “Special law.” A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.”

19. The higher standard for passing special laws that relate to the property, affairs, or government of a local government is codified in Article IX, Section 2 paragraph (b) of the New York State Constitution, which provides in pertinent part:

“(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.”

20. New York Public Authorities Law § 1262 defines the Metropolitan Commuter Transportation District (the “MCTD”). It states:

“There is hereby created and established a commuter transportation district to be known as the metropolitan commuter transportation district which shall embrace the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, provided, however, that the district shall not include a county that has withdrawn from the district pursuant to section twelve hundred seventy-nine-b of this article.”

21. The MTA Tax Bill imposes taxes and fees on persons and public and private entities located in the MCTD, as provided below:

The MTA Tax Bill added Subdivision 2 of Section 503 of the Vehicle and Traffic Law, which states:

“Upon passage of the knowledge test required to obtain a learner’s permit, an applicant for a driver’s license **who resides in the Metropolitan Commuter Transportation District** established by section 1262 of the Public Authorities Law shall be required to pay a supplemental fee of one dollar...” (emphasis added)

It also added Section 499 of the Vehicle and Traffic Law, which states in part:

“Registrants **residing in the Metropolitan Commuter Transportation District** shall upon the registration or renewal of the motor vehicle be charged a supplemental registration fee...” (emphasis added)

The MTA Tax Bill also added Section 801 of the Tax Law, which states in part:

“For the sole purpose of providing an additional stable and reliable dedicated source for the Metropolitan Transportation Authority and its subsidiaries and affiliates to preserve, operate, and improve essential transit and transportations services in the Metropolitan Transportation District, a tax is hereby imposed at a rate of thirty-four hundredths (.34) percent of (1) the payroll expense of **every employer who engages in business within the Metropolitan Commuter Transportation District** and (2) the net earnings from self-employment of individuals that are attributable to the Metropolitan Transportation District...” (emphasis added)

(Statutes Relating to the Third Cause of Action)

22. The New York State Constitution also sets a higher two-thirds vote requirement for passing a bill which appropriates public money for local purposes.

23. Article III Section 20 of the New York State Constitution provides, “The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.”

24. In drafting the MTA Tax Bill, the State Legislature specifically stated their intent to effect a local purpose. Specifically, Part G-1, Section 1 of the MTA Tax Bill provides:

“The several amounts specified in this act for aid to localities, or so much thereof as may be sufficient to accomplish the purpose of providing financial assistance to the metropolitan transportation authority are hereby appropriated and authorized to be paid as provided in this section.”

(Statutes Relating to the Fourth Cause of Action)

25. Article VII of the New York State Constitution contains particular rules for appropriation bills. N.Y. Const. art. VII Section 6 provides in part:

“Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose.”

“No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation.”

(Statutes Relating to the Fifth Cause of Action)

26. Article X Section 5 of the New York State Constitution provides that the New York State Legislature shall not accept, authorize acceptance of, or impose liability on the state for a public corporation’s obligations:

“Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof; but the state or a political subdivision thereof may, if authorized by the legislature,

acquire the properties of any such corporation and pay the indebtedness thereof.”

27. In 1965, the New York State Legislature passed Section 1263 of the Public Authorities Law, which established the Metropolitan Transportation Authority as a public corporation. Section 1263 provides in part:

“(1) There is hereby created the “Metropolitan Transportation Authority.” The authority shall be a body corporate and politic constituting a public benefit corporation...”

28. The first two sentences of the justification set forth in the Sponsor’s Memorandum to the recently passed law, found at 2009 Sess. Law News of N.Y. Ch. 25 (A. 8180) (McKinney’s), the MTA Tax Bill, state:

“The MTA faces a 2009 operating budget shortfall of \$1.8 billion, a deficit rooted in years of reliance on self-supported debt to fund its capital needs. Large and growing debt service payments, which in recent years had been masked by unprecedented collation of real estate transactional taxes, now place extraordinary pressure on the 2009 MTA operating budget and will continue to pressure MTA budgets and the farebox in years to come unless legislative action is taken.”

29. Part G, Section 1 of the MTA Tax Bill, codified in Section 92-ff of the New York State Finance Law, provides for the creation of the Metropolitan Transportation Authority Financial Assistance Fund, into which all of the revenues from the Metropolitan Commuter Transportation Tax:

a. NY State Finance Law § 92-ff(1), provides, “There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a special fund to be known as the “metropolitan transportation authority financial assistance fund.”

b. NY State Finance Law §92-ff(2) provides, “Moneys in the metropolitan transportation authority financial assistance fund shall be kept separately from and shall not be commingled with any other moneys in the joint or sole custody of the state comptroller or the commissioner of taxation and finance.”

c. NY State Finance Law §92-ff(3) provides,

“Such fund shall consist of all moneys collected therefore, or credited or transferred thereto from any other fund, account or source, including, without limitation, the revenues derived from the metropolitan commuter transportation mobility tax imposed by article twenty-three of the tax law; revenues derived from the special supplemental tax on passenger car rentals imposed by section eleven hundred sixty-six-a of the tax law; revenues derived from the transportation surcharge imposed by article twenty-nine-A of the tax law; the supplemental registration fees imposed by article seventeen-C of the vehicle and traffic law; and the supplemental metropolitan commuter transportation district license fees imposed by section five hundred three of the vehicle and traffic law. Any interest received by the comptroller on moneys on deposit in the metropolitan transportation authority financial assistance fund shall be retained in and become a part of such fund.”

d. NY State Finance Law § 92-ff(4), provides, “The Metropolitan Transportation Authority Financial Assistance Fund shall consist of two separate and distinct accounts: (A) the ‘Mobility Tax Trust Account’ and (B) the ‘Metropolitan Transportation Authority Aid Trust Account.’”

e. NY State Finance Law § 92-ff(5)(b), provides,

“Moneys in the ‘mobility tax trust account’ shall, pursuant to appropriation by the legislature, be transferred on a monthly basis to the metropolitan transportation authority finance fund established by **section twelve hundred seventy-h of the public authorities law and utilized in accordance with said section**. It is the intent of the legislature to enact two appropriations from the mobility tax trust account to the metropolitan transportation authority finance fund established

by section twelve hundred seventy-h of the public authorities law.”

30. Section 1270-h, paragraph 3 of the Public Authorities Law provides that money deposited in the Mobility Tax Trust Account be used to pay the obligations of the Metropolitan Transportation Authority and its subsidiaries. Specifically, it states:

“Moneys in the fund may be (a) pledged by the authority to secure and be applied to the payment of the bonds, notes or other obligations of the authority issued on or after the effective date of this section to finance capital projects of the authority and its subsidiaries and the New York city transit authority and any subsidiaries; or (b) used for payment of capital costs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, and the payment of all costs related to such obligations, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. Subject to the provisions of any such pledge, or in the event there is no such pledge, any excess moneys in this fund may be used by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. To the extent moneys in the fund have been pledged by the authority to secure and pay the bonds, notes or other obligations of the authority issued to finance capital projects of the authority and its subsidiaries and the New York city transit authority and any subsidiaries as herein provided, monies deposited into the fund shall be deposited to the extent necessary to satisfy the requirements of any debt service or reserve requirements, if any, of the resolution authorizing such bonds, notes or other obligations.”

31. According to Part G, Section 1 of the MTA Tax Bill, which added Section 92-ff to the State Finance Law, moneys deposited into the Metropolitan Transportation Authority Aid Trust Account are to be disposed of pursuant to Section 1270-A (4)(e) of the Public Authorities Law. That section provides that the money deposited in that account may be pledged by the

Metropolitan Transportation Authority to pay its obligations or those of its subsidiaries.

Specifically, Section 1270-A (4)(e) provides:

“Notwithstanding the foregoing provisions of this subdivision, any moneys in the corporate transportation account that are received by the authority pursuant to the provisions of section ninety-two-ff of the state finance law may be pledged by the authority, or pledged to the Triborough bridge and tunnel authority, to secure bonds, notes or other obligations of the authority or the Triborough bridge and tunnel authority, as the case may be, and, if so pledged to the Triborough bridge and tunnel authority, shall be paid to the Triborough bridge and tunnel authority in such amounts and at such times as necessary to pay or to reimburse that authority for its payment of debt service and reserve requirements, if any, on that portion of special Triborough bridge and tunnel authority bonds and notes issued by that authority pursuant to section five hundred fifty-three-d of this chapter. Subject to the provisions of any such pledge, or in the event there is no such pledge, any moneys in the corporate transportation account received by the authority pursuant to the provisions of section ninety-two-ff of the state finance law may be used by the authority for payment of operating costs of, and capital costs, including debt service and reserve requirements, if any, of or for the authority, the New York city transit authority and their subsidiaries as the authority shall determine. No moneys in the corporate transportation account that are reserved by the authority pursuant to the provisions of section ninety-two-ff of the state finance law may be used for making any payment to the Dutchess, Orange and Rockland fund created by section twelve hundred seventy-b of this title or considered in calculating the amounts required to be paid into such fund.”

(Statutes Relating to the Sixth Cause of Action)

32. The Public Authorities Law statutorily mandates that the Metropolitan Transportation Authority (“MTA”) be self-sustaining and prescribes the ways in which the MTA may raise money.

33. Section 1265 of the Public Authorities Law states in pertinent part:

“Except as otherwise limited by this title, the authority shall have power:

3. To borrow money, to issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof, and to finance or refinance all or any part of the costs to the authority or to any other person or entity, public or private, of the planning, design, acquisition, construction, improvement, reconstruction or rehabilitation of any transportation facility;...”

34. Section 1266 (3) of the Public Authorities Law, states in pertinent part:

“3. The authority may establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or by a subsidiary corporation of the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority... “

“...Such fares, tolls, rentals, rates, charges and other fees shall be established as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporations on a **self-sustaining basis**. The said operations shall be deemed to be on a self-sustaining basis as required by this title, when the authority is able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefore, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations. The authority may contract with the holders of bonds and notes with respect to the exercise of the powers authorized by this section.” (emphasis added)

FACTS AND CIRCUMSTANCES GIVING RISE TO COMPLAINT

General

35. The proposed operating budget for the MTA in 2009 was \$5.971 billion.

36. In or about May, 2009, the MTA announced that it was anticipating a \$1.8 billion shortfall and the Governor and New York State legislature, in response, passed the MTA Tax Bill.

37. According to the MTA's Statement of Consolidated Subsidies contained in the MTA's July 2009 Financial Plan, in addition to the MTA Tax Bill, the MTA will receive a total of \$4,621 million in subsidies to service its debt for 2009, as itemized below:

- a. \$1,465.4 million in Metropolitan Mass Transportation Operating Assistance receipts;
- b. \$625.8 million in Petroleum Business Tax (PBT) receipts;
- c. \$262.6 million in Mortgage Recording Tax receipts;
- d. \$213.9 million in Urban Tax receipts;
- e. \$2.6 million in investment income;
- f. \$190.9 million in State Operating Assistance;
- g. \$188 million in Local Operating Assistance;
- h. \$10.5 million from a Nassau County subsidy;
- i. \$86.3 million in Connecticut Department of Transportation subsidies;
- j. \$143.6 million in station maintenance subsidies paid by New York City and each of the seven counties in the MCTD;
- k. \$5.6 million in Mass Transit Assistance Program aid;
- l. \$329.2 million in a New York City subsidy for the MTA bus.

38. Upon information and belief, the major reason for this \$1.8 billion deficit is the MTA's reliance on self-supported debt. According to the Justification section of the Memorandum in support of the "MTA Tax Bill", known as A.8180 in the State Assembly (for purposes of this complaint, "the MTA Tax Bill" or the "Bill"), which passed the New York State Legislature on May 6, 2009, "The MTA faces a 2009 operating budget shortfall of \$1.8 billion, a deficit rooted in years of reliance on self-supported debt to fund its capital needs."

39. Upon information and belief, the self-supported debt referred to in the above paragraph includes various bond issues by the MTA, including bonds referred to in the MTA's 2009 Adopted Budget as "Transportation Revenue Bonds," "Dedicated Tax Fund Bonds," Triborough Bridge and Tunnel Authority ("TBTA") "General Revenue Bonds," and TBTA "Subordinate Revenue Bonds."

40. Upon information and belief, several types of bonds which the MTA issued were variable rate bonds, which are highly susceptible to the risk that interest rates will fluctuate.

41. Upon information and belief, in an attempt to manage the risk of changing interest rates on its variable rate bonds, the MTA entered into several volatile and risky interest rate swap contracts with a series of notorious counterparties, including Bear Stearns Capital Markets Inc., Lehman Brothers Special Financing, Inc., and AIG Financial Products Corp.

42. Upon information and belief, Bear Stearns Capital Markets, Inc was sold to JP Morgan Chase in March of 2008 for \$10 per share after a 52 week high of \$133 per share; Lehman Brothers Special Financing Inc. filed for bankruptcy in October 2008; and AIG Financial Products Corp. was a subsidiary of AIG, Inc., which made dangerous trades in credit derivatives, bankrupting AIG and requiring a government bailout which today amounts to approximately \$123 billion.

43. Upon information and belief, the terms of some of the MTA's swap contracts were particularly risky because they contained a provision that if one party became insolvent on its obligations, it could trigger the acceleration of any amount owed to the defaulting party (i.e. Lehman Brothers Special Financing, Inc., which went bankrupt) by the non-defaulting party (i.e. the MTA who lost money on the swap).

44. Upon information and belief, because of this provision, the MTA owed, as of June 30, 2009, a payment to Lehman Brothers Special Financing, Inc., in the amount of \$23.129 million.

45. Upon information and belief, if all of the MTA's swap agreements had terminated on June 30, 2009, the MTA would have owed the swap agreement counter-parties a total of \$362.163 million.

In addition, the MTA continues to pay exorbitant salaries to its workers. A report from the Manhattan Institute for Policy Research dated June 24, 2009, reported the following facts about the MTA's payroll:

- “More than 10 percent of the MTA's workforce-- 8,214 individuals in all--took home \$100,000 or more in total pay, including overtime. The MTA's six-figure club included:
 - 10 employees who earned more than \$250,000, averaging \$102,000 over their base salaries;
 - 44 employees who earned between \$200,000 and \$250,000, averaging \$89,000 over their base salaries;
 - 600 employees who earned between \$150,000 and \$200,000; and
 - 7,560 individuals who earned between \$100,000 and \$150,000.

- Eleven of the 654 employees who earned more than \$150,000 in 2008 were Long Island Railroad car repairmen who earned an average of \$206,000—which was \$143,000 over their average base pay rate of \$63,000.
- Other titles in the \$150,000-and-over category included:
 - 62 Long Island Railroad and Metro-North Railroad conductors who averaged \$83,000 over their base salaries which averaged only \$82,000;
 - 40 police officers averaging \$79,000 over their average base pay of \$90,000;
 - 39 gang foremen averaging \$87,000 over their average base pay of \$79,300; and
 - 30 Long Island Railroad engineers averaging \$103,000 over their average base pay of \$73,000.”

46. Upon information and belief, the MTA’s fiscal irresponsibility resulting in tremendous debt has created the need for a bailout of the MTA in the form of the MTA Tax Bill.

47. Upon information and belief, on May 6, 2009 State Senator Dilan and State Assemblyman Silver introduced the MTA Tax Bill in their respective committees at the request of Governor Paterson.

48. Upon information and belief, on May 6, 2009, Assembly Bill A.8180, the MTA Tax Bill, was introduced into the New York State Assembly Ways and Means Committee, sponsored by Assemblyman Silver, and was co-sponsored by Assemblymen Farrell, Lavine, Millman, Boyland, Brennan, Brook-Krasny, Clark, Cook, Dinowitz, Espaillat, Gottfried, Jeffries, Lancman, Markey, Mayersohn, Peralta, Powell, Robinson, and Scarborough.

49. Upon information and belief, The MTA Tax Bill passed the Assembly on the same day, May 6, 2009 by a vote of 86 in favor to 56 opposed, an affirmative vote of 60% of the Assembly.

50. Upon information and belief, the MTA Tax Bill was referred to the New York State Senate on the same day, May 6, 2009, and was sponsored by Senator Dilan.

51. Upon information and belief, the MTA Tax Bill was passed by the State Senate on the same day, May 6, 2009, by a vote of 32 in favor to 29 opposed, an affirmative vote of 52% of the Senate.

52. Upon information and belief, Governor Paterson delivered to the New York State Legislature a message of necessity regarding the MTA Tax Bill on May 6, 2009.

53. Upon information and belief, the Governor's message of necessity is an exception within N.Y. Constitution Article III Section 14 which allows the state legislature to pass a bill without any required amount of time to read and deliberate on the bill before its passage, nor any requirement that the bill be printed before its passage, notwithstanding the requirement in the absence of a message of necessity that "no bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage..."

54. Upon information and belief, the MTA Tax Bill was signed into law by the Governor on March 7, 2009 only one day after it was introduced into the New York State Legislature.

55. The MTA Tax Bill was passed under the official title:

"AN ACT to amend the vehicle and traffic law, in relation to supplemental learners permits (Part A); to amend the vehicle and traffic law, in relation to the metropolitan commuter transportation district supplemental registration

fee (Part B); to amend the tax law and the administrative code of the city of New York, in relation to the metropolitan commuter transportation mobility tax; and to repeal certain provisions of the tax law relating thereto (Part C); to amend the education law, in relation to certain moneys apportioned to school districts for reimbursement of article twenty-three of the tax law payments (Part D); to amend the tax law, in relation to a tax on medallion taxicab rides in the metropolitan commuter transportation district (Part E); to amend the tax law, in relation to a supplemental tax on passenger car rentals (Part F); to amend the state finance law, in relation to the metropolitan transportation authority financial assistance fund and making an appropriation relating thereto (Part G); making an appropriation providing financial assistance to the metropolitan transportation authority (Part G-1); and to amend the public authorities law, in relation to metropolitan transportation authority reporting requirements, in relation to legislative oversight of the metropolitan transportation authority, in relation to regulation of metropolitan transportation authority finances, in relation to the independent audit of the metropolitan transportation authority, and the publication of financial information, in relation to audits of the metropolitan transportation authority, in relation to directing the chairman of the metropolitan transportation authority to submit biennial reports to certain legislative committees on the condition of the metropolitan transportation authority, in relation to the fiduciary responsibility of board members, in relation to whistle-blowers on contract projects of the metropolitan transportation authority, and in relation to the powers and duties of the metropolitan transportation authority capital program review board (Part H).”

56. Upon information and belief, the MTA Tax Bill creates a new tax on employers and the self-employed located within the MCTD, codified in Section 801 of the New York State Tax Law (the “MTA Tax”).

57. Upon information and belief, the employers on whom the MTA Tax is imposed include local governments and school districts within the MCTD.

58. Upon information and belief, school districts within the MCTD receive reimbursement for their shares of the MTA Tax, as codified in Section 3609-G of the Education Law.

59. Upon information and belief, local governments receive no reimbursement for the MTA Tax imposed on them.

60. Upon information and belief, the MTA Tax Bill imposes a supplemental fee of one dollar for each six month period that a person in the MCTD holds a valid learner's permit, codified in Section 503 of the Vehicle and Traffic Law.

61. Upon information and belief, the MTA Tax Bill imposes a supplemental fee of twenty-five dollars per year on the registration and renewal of all registrants for motor vehicles who reside within the MCTD, as codified in Article 17-C of the Vehicle and Traffic Law.

62. Upon information and belief, the MTA Tax Bill imposes a surcharge of fifty cents on taxicabs within the MCTD, codified in Section 29-A of the Tax Law.

63. Upon information and belief, the MTA Tax Bill imposes an additional sales tax of five percent of the cost of an automobile rental within the MCTD, codified in Section 1166-A of the Tax Law.

64. Upon information and belief, Part G-1 of the MTA Tax Bill makes appropriations in the amount of \$3.2241 billion, \$3.2061 of which will go to the MTA. The appropriations in the bill are itemized as follows:

a. \$1,482,000,000 to the Metropolitan Transportation Authority for deposit in the Metropolitan Transportation Authority Finance Fund ("MTA Finance Fund") pursuant to section 92-ff of the State Finance Law;

b. \$1,563,000,000 to the Metropolitan Transportation Authority for deposit in the MTA Finance Fund pursuant to section 92-ff of the State Finance Law. These funds are to be deposited between April 1, 2010 and March 31, 2011;

c. \$161,100,000 to the Metropolitan Transportation Authority for deposit in the MTA Corporate Transaction Account of the Metropolitan Transportation Authority Special Assistance Fund pursuant to section 92-ff of the state finance law;

d. \$18,000,000 to state employees employed in the MCTD for payment of the MTA Tax pursuant to Article 23 of the Tax Law;

65. Upon information and belief, the MTA Tax Bill, is retroactive to March 1, 2009 as it applies to employers, is retroactive to January 1, 2009 for ten-twelfths of their income as it applies to the self-employed, and is retroactive to September 1, 2009 as it applies to school districts.

66. Upon information and belief, Part H of enacts a series of reforms to the structure and internal governance of the MTA. Specifically:

a. Sections 3 & 4 of Part H require that new members appointed to the MTA's board have experience in areas of activity central to the mission of the MTA;

b. Section 5 provides that the chairman of the MTA shall serve as the chief executive officer of the MTA and be responsible for the discharge of executive and administrative functions;

c. Section 5 also prohibits the chairman from participating in establishing the salary or other personnel policies of the chief executive officer (since, upon enactment, the chairman is the chief executive officer);

d. Sections 6 and 7 authorize the MTA chairman to delegate his or her responsibilities for the New York City Transit Authority and the Triborough Bridge and Tunnel Authority to officers of those authorities;

e. Section 7-a permits the governor to remove a member of a public authority for breach of fiduciary duty ;

f. Section 8 establishes the executive director of the MTA as the chairman and executive director of each subsidiary of the MTA;

g. Section 9 is intentionally omitted;

h. Section 10 establishes and defines the Permanent Citizens Advisory Committee;

i. Section 11 requires the MTA to promote broad usage of qualified transportation fringe benefits;

j. Section 11-a requires the authority to provide members of the MTA capital program review board with informational copies of the proposed capital plan;

k. Section 12 requires the MTA capital plan to promote participation by minority and women-owned business enterprises;

l. Section 13 adds new section 1269-e, f, and g to the Public Authorities Law;

i. 1269-e requires the MTA to submit a report of the financial condition of the MTA to the governor, speaker of the assembly, and temporary president of the senate within 30 days after the annual submission of the MTA's independent audit;

ii. 1269-f requires the MTA to submit a mission statement to the authority;

iii. 1269-g requires contractors with public works contracts from the MTA to provide information to employees on how to report fraud and abuse, and protections available to those who report the fraud and abuse;

m. Sections 14 and 15 authorize the MTA to deposit the revenues received from the State's MTA aid trust account into the corporate transaction account of the MTA special assistance fund;

n. Section 16 adds sections 1270-g and 1270-h to the Public Authorities Law:

i. Section 1270-g requires the MTA to implement policies to minimize unwarranted expenses in connection with the provision of member or employee benefits and in assignment and use of automobiles owned or leased by the authority;

ii. Section 1270-h establishes the MTA finance fund, into which the comptroller will deposit on a monthly basis the revenues from the mobility tax collected in the mobility tax trust account of the MTA financial assistance fund. This section provides that moneys deposited into the MTA finance fund may be pledged by the authority to secure bonds, notes or other obligations to finance capital projects or used for payment of capital costs, including debt service and reserve requirements. Subject to the provisions of any such pledge, any excess money in the MTA finance fund may be used by the authority for payment of operating costs or capital costs of the authority.

o. Section 17 adds Section 1276-b, 1276-c, and 1276-d to the public authorities law:

i. Section 1276-b requires the MTA to post its budgets and financial plans on its website.

ii. Section 1276-c provides that the independent auditor that performs the MTA audit shall not perform non-audit services for the authority, absent previous written approval by the audit committee

iii. Section 1276-d authorizes the legislature to commission an independent audit of the MTA's finances and operations;

p. Section 18 adds section 1279-c to the Public Authorities Law, creating the office of legislative and community input;

q. Section 19 requires the MTA to provide a listing of law firms retained by the authority which receive payment for services in the past year;

r. Section 20 requires that to the extent practicable, the MTA promote participation of New York State businesses in its procurement practices.

67. Upon information and belief, the Governor's message of necessity permitted the MTA Tax Bill to be introduced into the legislature and passed by the legislature on the same day, even though the bill creates new taxes and fees on employers and the self-employed within the MTA District, appropriates a total of \$3.045 billion to the Metropolitan Transportation Authority Finance Fund and \$161.1 million to the Metropolitan Transportation Authority Special Assistance Fund, and was controversial enough to pass by only 52% in the Senate and by only 60% in the Assembly.

68. Upon information and belief, the bill jacket to a bill normally contains memos, comments, and criticisms of a bill from members of the legislature, government agencies, and the public.

69. Upon information and belief, the Governor's office has refused to release the bill jacket to the MTA Tax Bill until January 2010 even though the tax became due on November 2, 2009 and is retroactive to March 1, 2009.

Two-Thirds Vote Required for Passage of a Special Law Affecting Property, Affairs, or Government of Local Government

70. As noted in paragraph 18 above, N.Y. Constitution Article IX Section 3 paragraph (d), clause (2), defines a Special Law as, "A law which in terms and in effect applies to one or

more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.”

71. Upon information and belief, the MTA Tax Bill is a Special Law because its application is limited by its terms to the MCTD, which is composed of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties, but not all counties in New York State.

72. Article IX, Section 2 paragraph (b) clause (2) of the New York Constitution requires that a Special Law which affects the property, affairs, or government of a local government requires either

- a. that the local governments affected by the special law request the special law by,
 - i. either two thirds of the total membership of the local government’s legislative body, or
 - ii. by request of the local government’s chief executive officer, concurred in by a majority of the local government’s legislature;

(each method of request by local government in N.Y. Const. Art. IX

§2(b)(2)(a) hereinafter referred to as a “Home Rule Message”); **or**

- b. that the special law receive a certificate of necessity from the state governor, and pass the state legislature by “...the concurrence of two-thirds of the members elected to each house of the legislature.”

73. Upon information and belief, the MTA Tax Bill affects the property, affairs and government of each local government in each county within the MCTD. Specifically, the MTA Tax Bill affects the property, affairs, and government of local government by imposing a tax on the payrolls of local governments, school districts and local government agencies amounting to

thirty-four hundredths of one percent of their payroll expense, codified in Section 801 of the Public Authorities Law (the “MTA Tax”).

74. Upon information and belief, the MTA Tax Bill did not receive a Home Rule Message, as required in N.Y. Const. Art. IX §2(b)(2)(a);

Upon information and belief, the MTA Tax Bill passed the State Assembly with an affirmative vote of only 60% of its members, and passed the State Senate with an affirmative vote of only 52% of its members, less than two-thirds concurrence in each case.

75. Upon information and belief, the MTA Tax Bill violates N.Y. Const. Art. IX §2(b) because it is a special law which affects the property, affairs, or government of local government, and it did not receive a Home Rule Message, nor was it passed by at least two thirds of each house of the State Legislature.

Two-Thirds Vote Required for Bill Appropriating Money for Local or Private Purposes

76. As noted above, Article III Section 20 of the New York State Constitution requires that bills which appropriate money for local or private purposes must be passed by an affirmative vote of each branch of the legislature.

77. As further noted above, the MTA Tax Bill is, upon information and belief, a Special Law because it is limited by the terms of the Bill to a local application, specifically, to the twelve lower counties of New York, otherwise known as the Metropolitan Commuter Transportation District.

78. Upon information and belief, an appropriation is for a local purpose when the money is to be expended in a particular locality, and the people of that locality are to be directly

and mainly benefited thereby, although the public may also be incidentally and remotely benefited.

79. Part G-1, Section 1 of the MTA Tax Bill provides “The several amounts specified in this act for aid to localities, or so much thereof as may be sufficient to accomplish the purpose of providing financial assistance to the metropolitan transportation authority are hereby appropriated and authorized to be paid as provided in this section.”

80. Upon information and belief, all funds deposited in the Metropolitan Transportation Authority Financial Assistance Fund will be made available for the use of the Metropolitan Transportation Authority.

81. Upon information and belief, the MTA operates exclusively within the MCTD, and all funds made available to the MTA under the MTA Tax Bill will be expended within the MCTD.

82. Upon information and belief, the MTA Tax Bill makes an appropriation for a local purpose because the appropriated moneys will mainly benefit the people of the localities within the MCTD, since the money derived from taxes and fees imposed by the Bill was appropriated specifically for the MTA, which only operates in the MCTD.

Each Provision in an Appropriation Bill Submitted by the Governor Must Relate Specifically to a Particular Appropriation in the Bill.

83. Article VII of the New York State Constitution contains particular rules for appropriation bills. N.Y. Const. Art. VII Section 6 provides in part:

“No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation.”

84. Upon information and belief, Assemblyman Silver, the sponsor of the MTA Tax Bill in the Assembly, introduced the Bill in the Ways and Means Committee upon the request of Governor Paterson.

85. Upon information and belief, Senator Dilan, the sponsor of (S5451) in the Senate, introduced the Bill into the Senate upon the request of Governor Paterson.

86. Upon information and belief the MTA Tax Bill was submitted to the New York State Legislature by Governor Paterson.

87. Upon information and belief, Part G-1 of the MTA Tax Bill contains appropriations totaling \$3,224,100,000, as more fully set forth in section 64 above.

88. Upon information and belief, Part H of the Bill enacts a series of reforms to the internal structure and governance of the MTA, and grants the Governor and Legislature broad powers as more fully set forth in section 66 above.

89. Upon information and belief, with the exception of Part H sections 14, 15, and 16 (relating to the disposition of funds received by the MTA, see section 66 subsections m and n, above), none of the sections in part H relate specifically to any of the particular appropriations made in part G-1 of the Bill.

State's Guaranty of Debts of the MTA, a Public Corporation

90. The "Justification" section of the sponsor's memorandum attached to the MTA Tax Bill, A.8180 states that:

"The MTA faces a 2009 operating budget shortfall of \$1.8 billion, a deficit rooted in years of reliance on self-supported debt to fund its capital needs. Large and growing debt service payments, which in recent years had been masked by unprecedented collection of real estate transactional taxes, now place extraordinary pressure on the 2009 operating budget and will continue to pressure MTA

budgets and the farebox in years to come unless legislative action is taken...”

91. The same section of the sponsor’s memorandum additionally provides:

“To reduce that \$1.8 billion deficit, the MTA has undertaken a series of administrative and managerial cost cutting and productivity measures, but these actions alone cannot satisfy the statutory requirement that the MTA be self sustaining.”

92. Upon information and belief, the MTA’s “large and growing debt service payments” referred to in the Justification Section of the Sponsor’s memorandum, amounted to approximately \$1.474 billion in 2009 and are projected to grow to approximately \$1.912 billion in 2010, according to the MTA’s 2009 Adopted Budget in the MTA’s February 2009 Financial Plan.

93. Upon information and belief, the debt service payments referred to in the above paragraph are the result of various bond issues by the MTA, including bonds referred to in the MTA’s 2009 Adopted Budget as “Transportation Revenue Bonds,” “Dedicated Tax Fund Bonds,” Triborough Bridge and Tunnel Authority (“TBTA”) “General Revenue Bonds,” and TBTA “Subordinate Revenue Bonds.”

94. Upon information and belief these bond issuances constitute obligations issued by a public corporation, the MTA, within the meaning of N.Y. Const. Art. X § 5.

95. Upon information and belief, Part G-1 of the MTA Tax Bill appropriates \$1.482 billion to the Metropolitan Transportation Authority Financial Assistance Fund which would be available to the MTA immediately, and appropriates another \$1.563 billion which would become available to the MTA for the period between April 1, 2010 and March 31, 2011.

96. Upon information and belief, the MTA Tax Bill authorizes that the above mentioned funds be used to pay the obligations of the MTA, a public corporation and its subsidiaries pursuant to the statutes described in Sections 30 and 31 above.

97. Upon information and belief, Article X Section 5 of the New York State Constitution prohibits the state legislature from accepting, authorizing or imposing liability on the state for the obligations of a public corporation, as more fully set forth in Section 26 above.

The MTA Must Be Self-Sustaining

98. N.Y. Public Authorities Law §1266(3) requires the MTA "...maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis..." as more fully set forth in paragraph 34 above.

99. The same section 1266(3) defines operating on a "self-sustaining basis" as

"...being able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefore, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations. The authority may contract with the holders of bonds and notes with respect to the exercise of the powers authorized by this section."

100. Upon information and belief, the State Legislature further demonstrated its intent that the MTA be self-sustaining by enumerating the ways that the MTA may raise money for itself in §§1265 (general powers of the MTA) and 1266 (special powers of the MTA) of the Public Authorities Law. In summary, the MTA's fundraising options enumerated by the State Legislature include:

a. §1265(3): the power to borrow money and issue negotiable notes, bonds, or other obligations;

b. §1265(4): the power to invest any funds, accounts or other monies not required for immediate use or disbursement;

c. §1266(3): the power to establish, levy and collect such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient, or desirable for the use and operation of any transportation facility and related services operated by the authority or a subsidiary. The fares, tolls, rentals, rates, charges or other fees shall be established and changed only if approved by resolution of the authority adopted by a majority vote. The authority may contract with holders of bonds and notes with respect to the exercise of the powers authorized by this section.

101. Upon information and belief, the general and special powers granted by the State Legislature for the MTA's use in meeting its self-sustaining requirement do not include the imposition of taxes by the State Legislature for the sole purpose of paying the MTA's obligations.

102. Upon information and belief, permitting the State Legislature to impose a tax, the entire proceeds of which will go either to the MTA or to reimburse certain persons or entities for payment of the tax, is so far from any possible interpretation of the term "self-sustaining" as contained in the Public Authorities Law as to render this statutory requirement meaningless.

FIRST CAUSE OF ACTION
(Violation of N.Y. Const. art IX Section 2(b)(2)(a))

Home Rule Message required for passage of Special Law Affecting the Property, Affairs, or Government of Local Government

103. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 102, inclusive, with the same force and effect at length herein.

104. N.Y. Constitution Article IX Section 3 paragraph (d), clause (2), defines a Special Law as, “A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages.”

105. Upon information and belief, the MTA Tax Bill is a Special Law because its application is limited by its terms to the MCTD, which is composed of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties, but not all counties in New York State.

106. Article IX, Section 2 paragraph (b) clause (2) of the New York Constitution requires that a special bill which affects the property, affairs, or government of a local government requires either

a. that the local governments affected by the special law request the special law either,

i. by two thirds of the total membership of the local government’s legislative body, or

ii. by request of the local government’s chief executive officer, concurred in by a majority of the local government’s legislature;

(each method of request by local government in N.Y. Const. Art. IX §2(b)(2)(a) hereinafter referred to as a “Home Rule Message”); or

b. that the special law receive a certificate of necessity from the state governor, and pass the state legislature by "...the concurrence of two-thirds of the members elected to each house of the legislature."

107. Upon information and belief, the MTA Tax Bill affects the property, affairs and government of each local government in each county within the MCTD. Specifically, the MTA Tax Bill affects the property, affairs, and government of local government by imposing a tax on the payrolls of local governments, school districts and local government agencies amounting to thirty-four hundredths of one percent of their payroll expense, codified in Section 801 of the Public Authorities Law (the "MTA Tax").

108. Upon information and belief, the MTA Tax Bill did not receive a Home Rule Message, as required in N.Y. Const. Art. IX §2(b)(2)(a);

Upon information and belief, the MTA Tax Bill passed the State Assembly with an affirmative vote of only 60% of its members, and passed the State Senate with an affirmative vote of only 52% of its members, less than two-thirds concurrence in each case.

109. The MTA Tax Bill violates N.Y. Const. Art. IX §2(b) because it is a special law which affects the property, affairs, or government of local government, and it did not receive a Home Rule Message, nor was it passed by at least two thirds of each house of the State Legislature.

110. Upon information and belief, this violation has allowed a geographic majority in New York State to exploit the geographic minority of the MTA District, against the will of the tax payers within the MCTD.

111. Based upon the foregoing conduct of the Defendants, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in

violation of the New York State Constitution until such time as this Court grants the relief sought herein.

SECOND CAUSE OF ACTION
(Violation of N.Y. Const. Art. IX Section 2(b)(2)(b))

Two-Thirds vote required for passage of Special Law Affecting the Property, Affairs, or Government of Local Government

112. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 111, inclusive, with the same force and effect at length herein.

113. Upon information and belief, the MTA Tax Bill is a Special Law because its application is limited by its terms to the MCTD, which is composed of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties, but not all counties in New York State.

114. Article IX, Section 2 paragraph (b) of the New York Constitution requires that a special bill which affects the property, affairs, or government of a local government and is given a certificate of necessity from the governor requires “the concurrence of two-thirds of the members elected to each house of the legislature.”

115. Upon information and belief, this constitutional requirement exists as a democratic safeguard to prevent the majority of New Yorkers from taking advantage of the few.

116. Upon information and belief, the MTA Tax Bill affects the property, affairs and government of each local government in each county within the MCTD by imposing a payroll tax on local governments, school districts, and local government agencies within the MCTD.

117. Upon information and belief, the MTA Tax Bill passed the State Assembly with an affirmative vote of only 60% of its members, and passed the State Senate with an affirmative vote of only 52% of its members, less than two-thirds concurrence in each case.

118. Upon information and belief, the failure of the MTA Tax Bill to pass each house of the legislature by an affirmative vote of at least two-thirds of the members of each house, violates New York Constitution Article IX, Section 2, paragraph (b).

119. Upon information and belief, this violation has allowed a geographic majority in New York State to exploit the geographic minority of the MTA District.

120. Based upon the foregoing conduct of the Defendants, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein.

THIRD CAUSE OF ACTION
(Violation of N.Y. Const Art. III Section 20)

Two-Thirds Vote Required for Bill Appropriating Money for Local or Private Purposes

121. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 120, inclusive, with the same force and effect at length herein.

122. Article III Section 20 of the New York State Constitution requires that bills which appropriate money for local or private purposes must be passed by an affirmative vote of each branch of the legislature.

123. Part G-1, Section 1 of the MTA Tax Bill provides “The several amounts specified in this act for aid to localities, or so much thereof as may be sufficient to accomplish the purpose

of providing financial assistance to the metropolitan transportation authority are hereby appropriated and authorized to be paid as provided in this section.”

124. Upon information and belief, the section of the MTA Tax Bill quoted immediately above demonstrates the intention of the State Legislature to effect an appropriation for local purposes through the MTA Tax Bill.

125. Upon information and belief, Part G-1 of the MTA Tax Bill is an appropriations bill because it contains appropriations totaling \$3,224,100,000, as more fully set forth in section 64 above.

126. Upon information and belief, all funds deposited in the Metropolitan Transportation Authority Financial Assistance Fund will be made available for the use of the Metropolitan Transportation Authority.

127. Upon information and belief, the MTA operates exclusively within the MCTD, and all funds made available to the MTA under the MTA Tax Bill will be expended within the MCTD.

128. Upon information and belief, the MTA Tax Bill makes an appropriation for a local purpose because the appropriated moneys will mainly benefit the people of the localities within the MCTD, since the money derived from taxes and fees imposed by the Bill was appropriated specifically for the MTA, which only operates in the MCTD.

129. Upon information and belief, the MTA Tax Bill makes appropriations for local purposes within the MCTD, and consequently, N.Y. Const. Art. III § 20 requires that the MTA Tax Bill be passed by the “the assent of two thirds of the members elected to each branch of the legislature.” N.Y. Cons. Art. III § 20.

130. Upon information and belief, the MTA Tax Bill was not passed by an affirmative vote of at least two thirds of the members elected to each house of the legislature.

131. Upon information and belief, the MTA Tax Bill was passed in violation of N.Y. Const. Art. III § 20 because it was not passed by at least two thirds of the members elected to each house of the legislature.

132. Based upon the conduct of the Defendants in passing and administering the MTA Tax Bill, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein.

FOURTH CAUSE OF ACTION
(Violation of N.Y. Const. Art. VII Section 6)

No appropriations may be made except by separate bills for a single object or purpose

133. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 132, inclusive, with the same force and effect at length herein.

134. N.Y. Const. Art. VII Section 6 provides in part that no appropriation bill submitted by the governor may contain a provision that does not relate specifically to some particular appropriation in the bill.

135. Upon information and belief, the MTA Tax Bill is a “Governor’s Bill.”

136. Upon information and belief the MTA Tax Bill was submitted to the New York State Legislature by Governor Paterson.

137. Upon information and belief, the MTA Tax Bill is an appropriations bill because it contains appropriations totaling \$3,224,100,000, as more fully set forth in section 64 above.

138. Upon information and belief, Part H of Bill enacts a series of reforms to the internal structure and governance of the MTA, as more fully set forth in section 66 above.

139. Upon information and belief, with the exception of Part H sections 14, 15, and 16 (relating to the disposition of funds received by the MTA, see section 66 subsections m and n, above), none of the sections in part H relate specifically to any of the particular appropriations made in the Bill.

140. Upon information and belief, this failure of sections 1 through 13 and 17 through 21 of Part H of the MTA Tax Bill to relate to a particular appropriation in the Bill, violates N.Y. Const. Art. VII Section 6.

141. Based upon the foregoing conduct of the Defendants, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein.

FIFTH CAUSE OF ACTION
(Violation of N.Y. Const. Art. X Section 5)

Prohibition on State's acceptance of liability for indebtedness issued by public corporation

142. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 141, inclusive, with the same force and effect at length herein.

143. New York Constitution Article X §5 prohibits the State Legislature from accepting, authorizing, or imposing liability on the State for the debts of a public corporation.

144. New York Public Authorities Law § 1263(1), establishes the MTA as a public corporation.

145. The Justification section of the Sponsor's memorandum to the Bill, which starts,

“The MTA faces a 2009 operating budget shortfall of \$1.8 billion, a deficit rooted in years of reliance on self-supported debt to fund its capital needs. Large and growing debt service payments, which in recent years had been masked by unprecedented collation of real estate transactional taxes, now place extraordinary pressure on the 2009 MTA operating budget and will continue to pressure MTA budgets and the farebox in years to come unless legislative action is taken,”

indicates the intent of the State Legislature to pay the debts of the MTA with taxes imposed by the state exclusively for the purpose of paying those debts.

146. The MTA Tax Bill appropriates \$3.2061 billion from taxes and fees imposed on employers, the self-employed, homeowners, taxi drivers, and drivers, and puts the proceeds into the Metropolitan Transportation Authority Finance Fund.

147. New York Public Authorities Law § 1270-h provides that money in the Metropolitan Transportation Authority Finance Fund may be:

“(a) pledged by the authority to secure and be applied to the payment of the bonds, notes or other obligations of the authority...” or;

“(b) ...used for payment of capital costs, including debt service, reserve requirements, if any, the payment of amounts required under bond and note facilities or agreements related thereto, the payment of federal government loans, security or credit arrangements or other agreements related thereto, and the payment of all costs related to such obligations...”

148. Similarly, the funds in the Metropolitan Transportation Authority Aid Trust Account are to be disposed of pursuant to the terms of the Corporate Transportation Account of the Metropolitan Transportation Authority Special Assistance Fund, set forth in Section 1270-A (4)(e). This section provides:

“Notwithstanding the foregoing provisions of this subdivision, any moneys in the corporate transportation account that are received by the authority pursuant to the provisions of section ninety-two-ff of the state finance law may be pledged by the authority, or pledged to the Triborough bridge and tunnel authority, to secure bonds, notes or other obligations of the authority...”

149. Upon information and belief, the imposition of taxes and fees for the stated purpose of paying the MTA’s obligations, and the payment of the proceeds of those taxes and fees into (1) the Metropolitan Transportation Finance Fund, and (2) payment of the proceeds into the Metropolitan Transportation Authority Aid Trust Account for deposit in the Corporate Transaction Account of the Metropolitan Transportation Authority Special Assistance Fund, both of which direct the deposited funds to be used to pay the MTA’s obligations, constitutes the State Legislature’s authorization, acceptance, or imposition of liability on the State for the debts of a public corporation, in violation of N.Y. Constitution Article X §5.

150. Upon information and belief, for the reasons stated immediately above, the MTA Tax Bill violates Article X §5 of the New York State Constitution.

151. Based upon the foregoing conduct of the Defendants, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in violation of the New York State Constitution until such time as this Court grants the relief sought herein.

SIXTH CAUSE OF ACTION
(Violation of N.Y. Public Authorities Law § 1266)

The MTA Must be Self-Sustaining

152. Plaintiff repeats, reiterates and realleges each and every allegation contained in the above paragraphs 1 through 151, inclusive, with the same force and effect at length herein.

153. N.Y. Public Authorities Law §1266(3) requires the MTA "...maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis...", as more fully set forth in paragraph 34, above.

154. The same section 1266(3) defines operating on a "self-sustaining basis" as "...being able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations..." as more fully set forth in paragraph 34, above.

155. Upon information and belief, the State Legislature further demonstrated its intent that the MTA be self-sustaining by enumerating the ways that the MTA may raise money for itself in §§1265 (general powers of the MTA) and 1266 (special powers of the MTA) of the Public Authorities Law.

156. Upon information and belief, the general and special powers granted by the State Legislature for the MTA's use in meeting its self-sustaining requirement do not include the imposition of taxes by the State Legislature for the purpose of paying the MTA's obligations.

157. Upon information and belief, permitting the State Legislature to impose a tax, the entire proceeds of which will go either to the MTA or to reimburse certain persons or entities for payment of the tax, is so far from any possible interpretation of the term "self-sustaining" as contained in the Public Authorities Law as to render this statutory requirement meaningless.

158. Upon information and belief, the State Legislature's imposition of taxes and fees on employers, the self-employed, homeowners, taxi drivers, and drivers in the MCTD, and the payment of all of the proceeds of such taxes and fees either to the MTA or to state employees for

the reimbursement of the MTA Tax, violates the self-sustaining requirement of New York Public Authorities Law § 1266.

159. Based upon the foregoing conduct of the Defendants, the Plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Defendants in violation of the Public Authorities Law until such time as this Court grants the relief sought herein.

160. That no prior application has been made by plaintiff's for the relief sought herein.

WHEREFORE: Plaintiffs pray for an order of this Court on the First, Second, Third, Fourth, Fifth and Sixth Causes of Action:

a. A declaratory judgment that the MTA Tax Bill violates New York State Constitution Article IX Section 2, as more fully alleged above;

b. A declaratory judgment that the MTA Tax Bill violates New York State Constitution Article III, Section 20, as more fully alleged above;

c. A declaratory judgment that the MTA Tax Bill violates New York State Constitution Article VII Section 6;

d. A declaratory judgment that the MTA Tax Bill violates New York State Constitution Article X Section 5, as more fully alleged above;

e. A declaratory judgment that the MTA Tax Bill violates New York Public Authorities Law §1266.


f. A stay against further collection of all taxes and fees imposed by the terms of the MTA Tax Bill.

g. Any other relief the court deems just, proper and equitable.

Dated: December 14, 2009
Bohemia, New York

**CAMPOLO, MIDDLETON
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By: _____


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