



MTA TAXPAYER ABUSE

MTA PAYROLL TAX IS UNCONSTITUTIONAL

Like many employers, I was angry when I had to write my first check to cover the recent "payroll tax," an unconstitutional creature of the New York Legislature which went solely to bailout the failed Metropolitan Transportation Authority.

My business, Hampton Luxury Liner, competes directly with the MTA. We run luxury charter and line-run buses to similar destinations as the Long Island Rail Road and Metro-North, and are able to do so at comparable prices offered by the MTA. We are also able to remain profitable, notwithstanding that our competitor is fully funded by taxpayer dollars. This illegal tax is now taking a successful business and forcing it to subsidize a competitor with a failed business model. Using these economic principles, it is no surprise that a recent study found that New York ranks first in business failures and last in business start-ups.

Being it is clear that I and all businesses in the State cannot rely on our current elected officials to help us succeed, I was forced to commence an action which seeks to show how this \$1.8 billion "payroll tax" violates the New York State Constitution and the Public Authorities Law. The State Constitution requires that 2/3 of the Legislature pass "special laws," which are defined as those laws that affect only a portion of the state or that effect the property and affairs of local governments. Here it is clear that this tax only has a regional purpose, and it directly affects the property of local governments as they are also required to pay the tax. These clear facts notwithstanding, the law was improperly put into effect after receiving only 60% of Assembly vote and 52% of the Senate vote; both votes being well below the required 2/3. The Legislature also failed to obtain any Home Rule Message when enacting this law.

The State Constitution further requires that any appropriation proposed by the Governor must have a sole purpose. In the case of the "payroll tax", numerous provisions and other political carrots were wrongfully attached to it so that it would be passed.

The State Constitution prohibits New York State from accepting the debt of any public corporation (like the MTA). The Legislature must now account for why it passed this unconstitutional and illegal tax and gave \$1.8 billion – which could have been used by existing businesses for job growth --for the sole purpose of servicing the MTA's debt.

The Public Authorities Law statutorily mandates that the MTA be self-sustaining and prescribes specific ways in which the MTA may raise money and incur its own debts. The Public Authorities Law does not permit this tax bail-out, particularly as some of the debts were incurred by the MTA engaging in high-risk interest rate swaps which appear to be questionable under the State Finance Law, and may be in violation of the MTA Board members' fiduciary obligations.

Testing the constitutionality of the payroll tax through the court system is the last way we as business owners have to force our current elected officials to confront the irresponsibility of the MTA. The MTA, with its 45 year history of corruption, inefficiency and fiscal irresponsibility, is a failed business model that no bail-out can save. November, 2010 is an important opportunity for taxpayers to vote for New York State officials who will stand on the side of business, job growth and opportunity and vote against those that have continued to support the State's biggest failure.