



NEW YORK STATE SENATOR

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## Mta Payroll Tax Ruling Met WITH Joy; Transit Authority Plans Appeal

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| ISSUE: **MTA (METROPOLITAN TRANSPORTATION AUTHORITY)**

Poughkeepsie Journal: 8.24.12 / Written By: C. Valdez & N. Schutzman

### **Businesses, commuters glad judge rejected payroll levy**

A state Supreme Court justice's ruling that the Metropolitan Transportation Authority's controversial payroll tax is unconstitutional has raised a slew of questions for commuters, business owners and elected officials.

In the aftermath of the decision Wednesday, MTA officials vowed to quickly appeal the ruling, while Gov. Andrew Cuomo's office and the state Attorney General's Office remained mum. For business owners, the decision was good news, but it had little impact on their balance sheets. A stay of the decision means businesses will have to continue to pay the MTA 34 cents for every \$100 of payroll, based on the 2009 law. However, commuters were left to wonder what impact the decision might have on fares and services, if the agency loses the \$1.2 billion it relies on from 12 counties.

Nasir Mahmood has owned Pine Plains Pharmacy for 24 years. He said small-business owners are happy about the decision, which he feels is fair considering the positive impacts

of small businesses. “Small businesses are the engines of the economy,” Mahmood said. “We’re the ones who support the communities, we create jobs and pay taxes. It was very unfair to put this burden on us.”

Business owners and elected officials called on the MTA and the state to accept the decision. Some questioned whether businesses would be due a refund for the taxes collected to date.

Giving up seems unlikely, as MTA Chairman and CEO Joseph Lhota said in a Thursday memo to fellow board members that the agency disagreed with the ruling and would “vigorously appeal” it. “The loss of this predictable revenue stream would have a devastating impact on the economy of the entire state. We would have no choice but to implement a steep fare and toll increase — well beyond what is currently planned for 2013 — as well as severe and unprecedented service reductions and employee layoffs,” Lhota wrote. “These would have an extraordinarily damaging effect on the local, regional and state economy. Loss of the payroll mobility tax would also be a tremendous blow to the capital program, causing us to cancel or defer projects that bring jobs to the entire state.” Lhota also noted the decision flies in the face of four similar cases that found the tax was constitutional.

In his ruling Wednesday, Nassau County Justice R. Bruce Cozzens Jr. called the payroll tax a “special law” passed by a 60 percent majority vote in the Assembly and 52 percent majority vote in the state Senate that does not serve the entire state’s interest.

“This law should have been, according to the state Constitution, passed with either a Home Rule message or by message of necessity with two-thirds vote in each house. This did not occur, therefore this law was passed unconstitutionally,” Cozzens wrote.

### **Local leaders**

Local community leaders and elected officials praised the decision, but cast a wary eye to what might happen next.

“Certainly this is a moment for many of us that had to endure taxes being rammed down our throats,” said Sen. Steve Saland, R-Poughkeepsie. “Though we have won what appears to be a major battle, I’m sure the war is far from over.” Saland said the court’s decision protects the local counties, who he said have been “revenue hostages” of the MTA. “(The decision) affords the opportunity to finally hold the MTA accountable. Hopefully when the sun sets, it’ll be a new day for Dutchess County,” Saland said. “It’ll be a day that will be greatly embraced by the taxpayers of our region.”

Dutchess County Regional Chamber of Commerce President and CEO Charles North said little has change immediately for businesses. “They still have to pay the tax. It’s the tip of the iceberg, we have a long way to go. I’m positive ... it’s going to go to highest court. I’m sure it will be appealed, and that’s probably the why the judge didn’t insist the state stop collecting the tax,” he said. “The MTA’s tentacles spread throughout tax collection entities such as Central Hudson (Gas & Electric Corp.), our gas stations, when we refinance our mortgages and when we buy a house. The tentacles are everywhere,” he said. “Now we have to go the next step and have the tax eradicated,” North said.

### **Next steps**

The MTA is planning to make a direct appeal to the state Court of Appeals, which streamlines the process, because the court’s decision was a constitutionality issue, said agency spokesman Aaron Donovan. He said the MTA will be represented by outside counsel who has yet to be named. Donovan said any party in the lawsuit can appeal the court’s decision individually, but he said the MTA is working closely with the state Attorney General’s Office and expects the state to join the appeal. The attorney general wouldn’t

comment on the court's decision or whether it would take further action.

Dutchess County Executive Marc Molinaro sent a letter to the Attorney General's Office imploring the state to withhold an appeal because it's a waste of taxpayer money to fight the decision. Rather, Molinaro said, the legislature should work with the governor to find a better way to provide resources. Molinaro acknowledged the "good relationship" the county has with Metro-North Railroad and the economic benefits the MTA provides, but said the agency needs to be more efficient and find cost savings. He said there should be a wholesale review of the taxes and a study of other states' mass transportation funding to enhance New York's system.

While Dutchess wasn't involved in the litigation, Molinaro said it's a victory for the county's taxpayers. He said Dutchess County residents pay \$100 million in six taxes plus vehicle fees to fund the MTA. "What they created was a fiscal hostage taking where they stampeded over the voice of already over burdened taxpayers," he said. Molinaro said the Senate majority abandoned the needs of the mid-Hudson Valley and Long Island. He added those who voted for the payroll tax "should be ashamed of themselves," and called their tactics "transparent and offensive."

Sen. Greg Ball, R-Patterson, called for a retroactive refund of the 2009 tax. "Since this tax was created, I have been fighting for a full repeal and this ruling will allow us to make our 80 percent repeal a full repeal and on an expedited time frame," said Ball. "I am so happy to hear that this job-killing tax was ruled unconstitutional, and now its time to demand a full repeal as well as a retroactive refund!"

Saland said he thought the MTA, should they not prevail, would be placed in the position where the obligation would be due to refund taxpayers. The courts can rule as they see fit to rule, he said, but if the tax is unconstitutional, a plausible argument can be made for a

refund.

### **Business owners**

When the payroll tax was first imposed by the state in 2009, Juan Carlos Salcedo didn't know he'd be paying another tax. "I had to educate myself quickly to what was going on," said Salcedo, who represents the Fishkill construction equipment company Intensus. "I was shaken, I wasn't well-informed." Nobody, he said, told him what was going on. The small-business owner hopes he may soon benefit from the ruling that payroll tax is unconstitutional.

Socorro and Radhames Delacruz have owned Campus Deli in Poughkeepsie for 18 years. Socorro Delacruz said that the last thing small-business owners need is another tax. "We pay enough as it is," she said. "Anything with more taxes isn't fair. If it's unconstitutional, then it should be taken out. We're barely making a living."

In Pine Plains, pharmacy owner Mahmood said the mood is optimistic among his friends who own small businesses. "We don't have any choice but to comply with the law," he said. "But people are happy about this and eventually I hope the tax will stop."

### **Commuters**

Many commuters sided with the opinion the MTA payroll tax is an unjust burden on residents and business owners.

"It's not fair," said Kecia Wilson, 47, of Hyde Park. "Why should we have to supplement the MTA's money problems?? Wilson, who commutes to Grand Central Terminal five days a week, said the agency should not piggyback the taxpayers nor increase fares. She said her monthly ticket has already increased. Wilson said the MTA should look to cut costs but not at the expense of customers. If the MTA can't afford to finance a service, Wilson adds the

agency should outsource train service to more responsible organizations.

Siobhan McBride, 26, of White Plains said the agency needs to regulate itself better rather than expect the taxpayers and customers to carry the load. "It seems ridiculous. They need to find a way to finance," she said.

But not all commuters oppose the MTA's payroll tax. Brian McCarthy, who considers himself "strong advocate of mass transit," said he stands by the MTA. McCarthy, 43, said businesses should support the MTA rather than the agency relying solely on riders. He said social investment in the system is essential. "The mass transit system is one of the features of a healthy, civic society and it costs money," the Poughkeepsie man said. "Having a healthy system is beneficial to the community as a whole." McCarthy said he believes the MTA needs the revenue so the community should make the sacrifices to protect and finance the mass transit system. He said it helps alleviate damage to the environment.