Payroll tax targeted; LI officials call MTA tariff unfair, seek repeal
Lawsuit planned with support of several towns

BY PATRICK WHITTLE AND WILL VAN SANT; With Ann Givens

The Metropolitan Transportation Authority's payroll tax is a "job-killer" that unfairly and illegally cost Long Island taxpayers more than $7 million in 2009, seven Suffolk County town supervisors said yesterday in vowing to overturn the tax with a constitutional lawsuit.

The move was cheered by local business owners such as Teresa Ward, owner of Teresa's Family Cleaning in Rocky Point, who said she is "totally disgusted" by having to pay a tax of about $4,600 a year.

Long Island politicians heralded the lawsuit as a sign of anti-tax bipartisanship, though state officials said they expect the litigation to fail.

The tax is particularly onerous in Suffolk because the county's residents are less likely than those in Nassau to use the Long Island Rail Road to commute, Brookhaven Supervisor Mark Lesko said.

Lesko, whose town is leading the legal effort, said the litigation will include a charge that the state violated its constitution's home-rule laws by failing to receive the towns' permission via a home-rule message before enacting a local tax.

"It is our responsibility to stand up to the state for handing down inappropriate and, we believe, illegal ways to tax our residents with no justifiable level of service in return," Lesko said at the Ronkonkoma train station.

Under home rule, localities are granted the power to enact local laws as needed. A home-rule message is required when a local government wants to make decisions on issues controlled by the state.

When the administration of former New York City Mayor Rudy Giuliani appealed in 1999 a state decision to rescind the city's commuter tax, it argued the state was not allowed to alter city tax policy without a home-rule message from the city. However, the State Court of Appeals ruled...
while that is true in most cases, the state can take such action when there is a "substantial state concern."

The payroll tax, enacted last year to plug a $1.8-billion MTA budget gap, charges employers in the 12-county MTA service area 34 cents on each $100 of payroll. Long Island's 13 towns and two counties paid more than $7.2 million in the tax last year, officials said. Amounts paid by towns ranged from $476,839 in Hempstead, to $270,000 in Brookhaven and $11,051 in Shelter Island.

The MTA still faces an $800-million deficit this year, said agency spokesman Aaron Donovan, who defended the tax as "an important revenue source for the MTA."

Lawsuit to be filed

Town officials said the lawsuit will be filed in State Supreme Court as soon as this week, and will name the MTA and likely at least one other state agency as defendants. Suffolk County and a number of school districts could also become plaintiffs in the suit, town and county officials said.

But Matt Anderson, spokesman for the state division of budget, said he anticipates the suit will fail. "We fully expect that this law would withstand legal scrutiny," he said.

Several constitutional law experts yesterday said state constitutional law is so vast and amorphous that it is nearly impossible to speculate on the strength of a possible lawsuit.

Professor Ralph Stein, who teaches constitutional law at Pace Law School, said a lawsuit based on home-rule requirements can be successful, but the towns would have to show that such a requirement was violated.

"These issues are very tricky," Stein said.

Business owners, such as Southampton Chamber of Commerce president Bob Schepps, argue the tax is unfair to companies whose employees don't rely on the MTA to commute.

And it makes it more difficult to hire, owners say, even as government officials tout small business growth as an engine to drive the economy out of its morass, said Stacy Sanders, director of taxation at the accounting firm Satty, Levine & Ciacco in Jericho.

"It makes people worry," said Sanders. "What are they going to tax next?"

Governments and businesses speaking with one voice on the tax is no surprise to Bill Schoolman, who owns Bohemia-based Classic Coach and Hampton Luxury Liner. Schoolman filed a constitutional lawsuit against the MTA in December.

According to Schoolman and his attorney, town officials contacted them and expressed interest in copying their lawsuit.

"The more, the better," said Schoolman, 69.

Brookhaven and Southampton's town boards have approved filing the lawsuit. Huntington, Smithtown, Islip, Riverhead and Babylon are expected to do so, officials said.

With Ann Givens
Taxing situation
What some Long Island municipalities paid in MTA payroll taxes last year:
Nassau County $2.8 million
Suffolk County $2.6 million
LI's 13 towns $1.8 million
Municipal total $7.2 million