THE PORT AUTHORITY OF NY & NJ

Patrick J. Foye
Executive Director

January 13, 2012

Hon. Thomas H. Mattox
Commissioner
New York State Department of Taxation and Finance
Building 9, W. Averell Harriman Campus
Albany, NY 12227

Dear ~~Mr. Mattox~~ Tom:

We would like to request that your office provide guidance with respect to whether the free use of E-ZPass at Port Authority tunnels and bridges provided to certain of our retirees constituted taxable income in the State of New York.

In November of 2010, the Port Authority's Board of Commissioners voted unanimously to discontinue its Non-Revenue E-ZPass Program for all retirees, along with certain other active Port Authority employees and Commissioners. This decision was effective January 1, 2011. During the existence of the program, holders of a Non-Revenue E-ZPass were permitted to travel toll-free, on an unlimited basis, through Port Authority-operated facilities (though not at the facilities of other toll authorities). The Non-Revenue E-ZPass also allowed the holder fee-free parking at Port Authority airport facilities.

For your background, the program began in the mid-1930's using paper passbooks or vouchers. With the advent of electronic tolling, retirees and employees were provided a Non-Revenue E-ZPass, with limited restrictions on their use including that the beneficiary be physically present in the vehicle when the tag was used. For retirees, our policy allowed lifetime use for commutation and personal purposes.

Previously the value of the benefit was considered by the Port Authority to be a "no-additional-cost service" fringe benefit, excluded from gross income under Section 132 of the Internal Revenue Code, and the Port Authority applied this conclusion for State and local tax purposes as well in both New York and New Jersey. No formal ruling was sought from any tax authority for this conclusion. Given that under current toll levels use of a Non-Revenue E-ZPass represents a significant on-going financial benefit, we request that your office provide guidance on whether this benefit should have been deemed a taxable benefit to retirees and others who have enjoyed its use. From a Port Authority perspective, this perk had become a meaningful financial expense and a significant savings to retirees holding this valuable benefit.

Historically, the Port Authority had established audit controls over the use of these Non-Revenue E-ZPass accounts, including periodic spot enforcement and audit for compliance with the program guidelines. However, strict compliance with the program (e.g. allowing non-retiree family members to use the pass, use only in Class 1 vehicles, etc.) remained a concern of the agency.

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As you may be aware, the Port Authority is currently the subject of several lawsuits by retirees, including one seeking class-action status, seeking to restore this lifetime perk.

Your guidance would be greatly appreciated and I thank you in advance for your assistance.

Regards,

Pat Foye

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