



May 30, 2023

Hon. Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Dear Governor Hochul,

I am writing on behalf of the 100,000 rideshare drivers in New York City to request that you address a serious defect in the latest Central Business District Tolling Plan that would have inequitable, harsh, and counterintuitive consequences on some of the lowest income, minority New Yorkers who are already struggling to stay in business and provide for their families.

Summary

We disagree with the proposed plans approved under the final environmental assessment of the Central Business District tolling plan for three reasons, and we propose a better alternative, directly taxing passengers with an increase of one dollar on the existing surcharge on each ride below 96th Street. Our concerns are:

- 1) The proposed double taxation of FHV rides is unfair.
- 2) Singling out this economic justice community for double taxation is illegal and may lead to years of delays in court.
- 3) By targeting rideshare drivers, rather than their passengers, the proposals will fail to reduce congestion in the Central Business District, one of the central goals of the policy.

Analysis and Proposal

Below I address each point in detail and then propose an alternative that will better meet the goals of congestion pricing without further targeting this economic justice population.

1. The existing proposals are unfair.

The final environmental assessment of the state's Central Business District tolling plan released on May 12th finds that the MTA's tolling plan would add a second congestion tax as high as \$23 per day that, this time, would be directly assessed on drivers -- not consumers or the billion-dollar app companies. Drivers who would

choose to decline rides into the zone to avoid the tax would be penalized by the companies and eventually thrown off the platform taking away their livelihood.

Not only does the MTA not provide a mechanism for the cost to be borne by the consumer or the app companies, but there is also no way for such a charge to be passed along to consumers as proposed by the MTA. Nor can we expect profit-driven app companies to take on this expense for the drivers unless it is clearly written into law.

This means that rideshare vehicle drivers will solely bear the cost of this additional tax. For a for-hire vehicle driver with a typical six days per week schedule, the tolls would total as much as \$7,000 per year. That means the MTA proposes to tax FHV drivers, over 90% of whom are immigrants and people of color, over 15% of their annual take-home pay.

This new tax will be on top of the \$2.75 congestion fee already placed on every ride below 96th Street. When congestion pricing legislation was originally passed, this fee was meant to be the ONLY tax on FHV rides within the Central Business District. The idea was that yellow cabs and FHVs would start paying a congestion tax first in order to give the MTA enough funding to get ready for when the remaining vehicles were added to the program. This tax has already given the MTA over \$1 billion since 2019. Adding a second tax to this population, and only this population, would be unfair.

2. Double-taxing FHV drivers is illegal.

The environmental assessment correctly identifies FHV drivers, 91% of whom are immigrants, as an “economic justice population” under federal law. Almost all of the taxation plans considered would create a second tax for taxi drivers and FHV drivers who, as mentioned above, have already been saddled with a \$2.50 (taxi)/\$2.75 (FHV) tax for every trip below 96th street in Manhattan, a zone that encompasses the entire Central Business District. Under all of the proposals analyzed in the assessment, only a variation of one scenario, Scenario D, would not create a double tax for FHV drivers.

The MTA has indicated that they plan to add a second tax to FHV drivers going forward. That means that only FHV drivers, or only FHV drivers and taxi drivers (another economic justice population), would be subject to double taxation. No population that isn't an economic justice population would be subject to double taxation. The high-income, predominantly white population that lives and works within the Central Business District would pay no tax at all to drive to and from work.

The assessment points out that this second tax would devastate this economic justice population leading to a reduction of approximately 15,000 driver jobs. The law is clear that enacting congestion pricing with a disparate negative impact on this economic justice population is only allowed if 1) it is unavoidable, and/or 2) there is appropriate mitigation. Neither is the case here.

First, the assessment does offer one scenario, a variation on Scenario D, where the goals of the program are met and no population, economic justice or otherwise, faces double taxation. Second, the mitigation offered to drivers for losing their income and leaving them saddled with tens of thousands of dollars in debt from car loans and other expenses, is a coupon for a fee waiver on a bus driving test worth \$70.

Since this disparate impact is neither unavoidable nor appropriately mitigated, you must reject any plan that double taxes this population. Failure to do so could result in a successful court challenge of any plan.

Attached is a short summary of the relevant law.

3. Taxing rideshare drivers does not create the outcomes the law is trying to achieve.

The purpose of the tolling plan is to raise money for the MTA and discourage vehicle traffic in the CBD. While taxing rideshare drivers who are responding to requests made by consumers will raise money for the MTA, it won't discourage those passengers from ordering those trips. Drivers do not decide whether or not to take passengers into or out of the CBD; passengers do. Taxes are used to disincentivize the behavior that is being taxed, but in this case, it misses the mark by not taxing the decision-maker.

There is a better way.

IDG does not support any additional tax on rideshare trips, but we understand the important goals of the congestion pricing law. If the state is determined to raise even more revenue from rideshare trips, there is a much better and legal solution: an additional per-trip customer charge of one dollar be added to the existing fee. This would be in addition to the \$2.75 congestion fee that is currently being assessed for a total of \$3.75. This per-trip, per-customer charge would be the most equitable approach, would not run afoul of federal protections for economic justice communities, and would provide for an accurately targeted incentive, while still providing the funds necessary for the MTA.

To double tax those who can least afford it is obscene and puts the livelihood of an already fragile group of low-income rideshare drivers in jeopardy. We thank you for your consideration and welcome any questions or a discussion about this matter at your earliest convenience.

Sincerely,



Brendan Sexton, President
The Independent Drivers Guild (IDG)

C: Karen Persichilli Keogh
Nivardo Lopez
Janno Lieber
MTA Board Members
Traffic Mobility Review Board (TMRB)
Federal Highway Administration
Meera Joshi
David Do

(Attachment Follows)

Summary of the Law Prohibiting Double Taxation of the Economic Justice Population “For-Hire-Vehicle Drivers”

Order 5610.2C and FHWA Order 6640.23A require the FHWA to identify whether its actions could have a disproportionately high and adverse effect on low-income and minority populations, after accounting for mitigation and offsetting benefits.

USDOT Order 5610.2C and FHWA Order 6640.23A both define a disproportionately high and adverse effect on an environmental justice population as happening when the following occurs:

1. An adverse effect is predominantly borne by a minority population and/or a low-income population; or
2. An adverse effect would occur to a minority population and/or low-income population that would be appreciably more severe or greater in magnitude than the adverse effect that would occur to the non-minority population and/or non-low-income population.

Under either of these prongs, double taxation is “disproportionately high and adversely affects” this population.

1. The double taxation would fall not just “predominantly” but *exclusively* on one or two economic justice populations - FHV and Taxi drivers; AND
2. The double taxation would fall on no non-minority and/or non-low-income population, only one or both of these minority and low-income populations.

So, this economic justice population would feel a disproportionately high and adverse impact.

The law does allow scenarios that have a disparate and adverse effect on FHV drivers under certain circumstances. These circumstances are not met in this case, however.

Specifically, Order 5610.2C and FHWA Order 6640.23A state that the FHWA will ensure that any actions that have the potential for a disproportionately high and adverse effect on minority or low-income populations will only be carried out if ALL of the following three prongs are met:

1. Further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable.
2. A substantial need for the program, policy or activity exists, based on the overall public interest.
3. Alternatives that would have less adverse effects on protected populations have either: (a) adverse social, economic, environmental, or human health impacts that are severe; or (b) would involve increased costs of extraordinary magnitude.” USDOT Order 5610.2C and FHWA Order 6640.23A further explain, “In determining whether a mitigation measure or an alternative is ‘practicable,’ the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

In this case, the second prong is met, but if the new plan allows FHV drivers to be double taxed, the first and third are not. The second prong requires that there be a substantial need for the program. In this case, reducing congestion and increasing funding for public transportation alternatives are needed.

However, the first prong is not met. Mitigation policies suggested in the environmental assessment are meager at best. In cases where a highway policy costs an individual tens of thousands of dollars, say by running a highway through their property, the government pays the individual for the loss in full. In this case, double taxation would destroy the livelihood of tens of thousands of individuals and give them little more than a \$70 coupon for a driving test.

Most importantly, the final prong requires that if there are any alternatives to disproportionately adversely impacting the economic justice population while still achieving the overall policy goals, such options must be used instead. The environmental assessment does include one scenario in which the FHV and Taxi drivers are not double taxed, and the program raises the targeted amount of funds and reduces congestion. That is a variation of Scenario D in which these economic justice populations are not double taxed, and it can be found in the environmental assessment on page 16-29.

Therefore, the MTA must reject all of the scenarios in which FHV drivers are double-taxed.