

January 2012

## Overview of Chapter Amendment to S.5825 and A.8496

**Quick Summary.** The State and City of New York and the taxicab industry are approaching an important crossroads in the integration and expansion of wheelchair accessible cabs. Highlights in the pursuit of a solution are summarized below with additional material – including *The New York Times* op-ed on the same topic - available via hyperlinks.

### **The State and City of New York's Plan to Expand Street Hail Service Citywide, Increase Wheelchair Accessibility and Raise Revenue from Auctioning New Medallions and Permits**

#### **OVERVIEW**

On December 21<sup>st</sup>, 2011, New York State Governor Andrew Cuomo signed a Chapter Amendment to the laws of 2011 (the “Chapter Amendment”) which authorizes New York City (“NYC”) to issue (i) up to 2,000 new taxicab licenses to vehicles that are accessible to individuals with disabilities, (ii) 18,000 hail vehicle licenses; (iii) up to 450 hail base permits to for-hire base stations; and to amend the state tax law, NYC administrative code and the state vehicle and traffic law, in relation to taxicabs and hail licenses.

This new law is expected to significantly impact NYC for-hire ground transportation, as well as raise government revenue from the sale of new medallions and hail permits. Highlights include new oversight authority being vested in the Governor via the NY State Department of Transportation (DOT), as well as several direct delegations of authority to the Mayor of NYC and the TLC, with a reduced advisory role accorded to the NYC Council. This new law could increase the total size of the wheelchair accessible fleet to 5832: comprised of 2232 (or 17%) of all 12,237 yellow taxicabs, and up to 3600 of the 18,000 livery street hail permit vehicles. Also, the Chapter Amendment authorizes the first-ever government subsidy fund and grant program in the amount of \$54 million for accessible vehicle wheelchair ramp retrofitting. In addition to the staggered issuance of permits, several significant reports must be prepared on the new hail permits and accessibility initiatives. Other provisions authorize a 50 cent surcharge to apply to these new vehicles, to be paid by passengers and collected and recorded by owners. Holding it all together are increased fines and penalties for engaging in illegal street hails without required permits. The Chapter Amendment has many nuances and the implementation of these systemic changes will be determined largely by subsequent regulations, studies, legal interpretation and litigation. Subsequent TLC regulations will govern the procedures for not only medallion auctions, but also for how the new base and vehicle hail permits and accessible grants will be distributed.

To further complicate developments, just two days after the passage of this new law, Federal District Judge George Daniels issued a decision in *Noel v. TLC* that appears to halt the issuance of any permits under the Chapter Amendment until he approves a TLC plan. This legal action was commenced by

{10722570:1}

disability advocates, and the Court found that the TLC discriminated against wheelchair users under the Americans with Disabilities Act (ADA). While the legislative intent of the Chapter Amendment concludes that taxis and liveries are part of the “mass transit system”, the Court found that the TLC does not operate a “public transportation system” under the ADA. However, the Court did find that based on the limited number of approved wheelchair accessible vehicle models and vehicles in the overall fleet, that the TLC does not provide “meaningful access” for disabled passengers in violation of the ADA.

## HIGHLIGHTS OF WHEELCHAIR STREET HAIL

### Legislative Findings

- The legislature declared that taxicabs are considered a *part of mass transportation*, and that a majority of residents and non-residents of NYC do not have sufficient access to legal, licensed taxicabs available for street hails.
- The legislature found it is of “substantial state concern” to improve access to mass transit and to increase the insufficient supply of accessible vehicles.

### Types of Hail Permits

- The NYC Taxi and Limousine Commission (the “TLC”) is authorized to issue the following hail permits:
  - 18,000 transferable hail vehicle licenses; and
  - 450 non-transferable hail base permits to for hire base stations
- All Inter-borough Hail Licenses authorize a designated vehicle to pick-up passengers by street hail outside of the *Hail Exclusionary Zone* (in Manhattan south of East 96<sup>th</sup> Street and south of West 110<sup>th</sup> Street) and by prearranged call at the *airports* and outside the Hail Exclusionary Zone.

### Hail Base Permits

- Issued for a \$300 fee, non-transferable, valid for 3 years, and automatic renewal fee to be set by TLC.
- Initial issuance will be limited to existing for-hire vehicle base stations “in good standing” in operation for at least 3 years.

### Hail License Issuance Schedule

- 1st Issuance:
  - 6,000 hail licenses shall be issued within 1 year from the date of the 1<sup>st</sup> issuance, and if all are not issued, they can be carried over to the next issuance.

- 20% (or up to 1200) of the first issued hail licenses will be restricted to accessible vehicles (or 20% of every 1000 issued).
- The 20% formula remains unless a required TLC “Disabled Accessibility Plan” recommends a different percentage of accessible hail licenses.
- 2<sup>nd</sup> Issuance:
  - 1 year after the 1<sup>st</sup> issuance, up to 6,000 additional hail licenses may be issued.
- 3<sup>rd</sup> Issuance:
  - 1 year after the 2<sup>nd</sup> issuance, up to another 6,000 hail licenses may be issued.

### **Hail Vehicle License**

- Within the first 3 years of the first issuance, hail licenses may be issued only to owners of for-hire vehicles or for-hire drivers in good standing who have been licensed by the TLC for at least 1 year.
- Hail licenses are valid for 3 years and the right to renewal is automatic upon payment of a TLC set renewal fee.
- Hail licenses may be transferrable to FHV owners or drivers in good TLC standing.
- Individuals or entities may own only 1 hail license for the following fees:
  - 1<sup>st</sup> issuance = \$1,500
  - 2<sup>nd</sup> issuance = \$3,000
  - 3<sup>rd</sup> issuance = \$4,500

### **Hail Market Analysis**

- TLC must prepare a hail market analysis examining rider demand, shortages, and the need for adequate and affordable transportation, to be submitted to the NYC City Council for its comments and for public comment, and to the DOT.
- The report will address:
  - Any need for additional hail licenses to meet rider demand;
  - Adequacy of enforcement provisions;

- Impact of new licensing on for-hire vehicle license owners, taxicab license owners and other industry participants;
- Any need for related statutory or regulatory changes;
- Actions of the TLC on (i) promulgation of rules governing hail vehicles and enforcement of laws governing for-hire vehicles, taxicabs, hail vehicles; (ii) allocation of resources for enforcement; (iii) deterring and punishing individuals who repeatedly violate such laws; and
- Any additional areas outside of Manhattan that should be included in the Hail Exclusionary Zone.

### Accessible Vehicles

- Yellow Medallion Taxicabs
  - NYC may, acting by the Mayor alone, authorize the TLC to issue up to 2,000 taxicab medallion licenses restricted to wheelchair accessible vehicles or “containing [a] device or alteration designed to permit access to and enable the transportation of persons in wheelchairs.”
  - These new yellow medallions will be transferable, must be issued by public auction, and no more than 400 may be issued until a Disabled Accessibility Plan (discussed *infra*) is approved by the DOT.
- Grant Program & Financing
  - The TLC may:
    - (i) provide grants (in an amount up to \$15,000 per vehicle and \$54 million overall) to purchasers of hail licenses restricted to accessible vehicles to be used to purchase the vehicle or retrofit with wheelchair ramps; or
    - (ii) provide vehicles to purchasers on “affordable and financially feasible terms.”
- TLC Inspections Increased for FHVs: Inspections of accessible vehicles must be conducted at a TLC inspection facility not less than once every 8 months – which should not affect the trice annual inspections for taxicabs, but serves to increase FHV inspections that are currently only once every license term at a TLC facility.
- Disabled Accessibility Plan:
  - Within 1 year after the 1<sup>ST</sup> issuance of hail vehicle licenses, the TLC shall prepare and submit to the DOT a comprehensive plan that:

- (i) sets forth an accessibility plan that contemplates a gradual phase-in of accessible vehicles to the taxicab, for-hire vehicle and hail vehicle transport system;
  - (ii) makes accessible vehicles available based on need within geographic areas of NYC;
  - (iii) may include alternative means of increasing marketability and adequacy of incentives to purchase accessible licenses; and
  - (iv) recommendations for the percentage of hail licenses issued in the 2<sup>nd</sup> and 3<sup>rd</sup> issuances.
- The plan shall be prepared in consultation and cooperation with disability rights advocates and other stakeholders, and be submitted to the NY City Council for comments before submission to the DOT.
  - The TLC shall not be permitted to issue more than 400 of the new medallion taxicab licenses until the accessibility plan is approved by the DOT.

### **Taximeters and Vehicle Equipment**

- TLC is directly authorized to pass rules governing the equipment in hail vehicles, including taximeters, and may also provide for the licensing of businesses which manufacture and provide such equipment.
- Taximeter was defined in the statute as “an instrument or device approved by the TLC by which the charge to a passenger for hire of a licensed taxicab for a taxicab trip or a hail vehicle for a hail vehicle trip is automatically calculated and on which such charge is plainly indicated.”
- The taximeter of a hail vehicle may also be used to record information of a dispatch trip.

### **Tax Law Amendments**

- **MTA Surcharge**: imposes a surcharge of 50 cents on every taxicab or hail vehicle trip that originates in the city and terminates anywhere within the territorial borders of the metropolitan commuter transportation district (“MCTD”).
- **Tax Liability**: Taxicab and hail base *owners* are liable for the tax, which shall be imposed on *passengers* via a “pass through” to be implemented via TLC regulations.
- **Record Keeping Requirements**:
  - Taxicab or hail base permit owners must maintain:

- records of every taxicab or hail vehicle trip originating in the city; and
- copies of all contracts to lease taxicabs or hail vehicle affiliation agreements where use of the vehicle requires a tax on trips.
- This requirement extends to any NYC or TLC contractor that is responsible for administering, possessing or obtaining information from taximeters (including the Taxi Passenger Enhancement Program or T-PEP vendors).

**Fines and Penalties**

- Unlawful solicitation at airports: class B misdemeanor and fine of \$750 - \$1,550, and/or imprisonment up to 90 days.
- Unauthorized street hails: drivers face fines of \$500 for the first violation; \$750 for a 2<sup>nd</sup> conviction within 2 years; and revocation for a 3<sup>rd</sup> conviction within a 10 year period.
- Unlawful fleeing: drivers fleeing enforcement officers when performing unauthorized street hails is a misdemeanor punishable by a fine of between \$750 and \$1,000, and/or up to 90 days imprisonment.
- An *Affirmative Defense* for street hail license and taxicab owners is codified with respect to any discretionary revocation actions commenced by the TLC where the owner:
  - (i) exercised *due diligence* in the inspection or management of the taxicab, for hire vehicle or hail vehicle;
  - (ii) did not know or have reason to know of the illegal acts of any other person.

**Effective Dates**

- This Chapter Amendment was scheduled to take effect immediately.
- The tax provisions are scheduled to take effect on February 15, 2012 if the commissioner of taxation and finance receives written notice by January 15, 2012 that the TLC has authorized hail vehicles (or if not so notified, then on the 1<sup>st</sup> day of the first month at least 20 days after such notice is received).

## RELATED MATERIAL

- Read this regulatory update online. The overview is not intended to contain legal advice or opinion, but is being provided for your informational purposes.
- Read Matthew Daus' January 5, 2012 op-ed in *The New York Times* entitled "Hailing the Wrong Taxi."

## CONTACT

If you wish to obtain further information, guidance or advice concerning the potential impact of this new legislation on your business, please contact Matthew Daus at [mdaus@windelsmarx.com](mailto:mdaus@windelsmarx.com) or at (212) 237-1106.

## ABOUT TRANSPORTATION

Windels Marx is dedicated to serving ground transportation and related businesses. We counsel companies of all sizes on a broad range of transportation matters, including regulatory compliance, strategic planning, administrative law, and public policy throughout the United States and internationally. We also work with government regulators - both domestic and foreign - that seek our assistance in improving their transportation services or re-engineering their systems and infrastructure. Combining regulatory expertise, a multidisciplinary approach, and a solid grasp of the transportation industry's unique operations and issues, we help clients to solve complex legal problems and achieve their business goals. At the same time, we never lose sight of the need to promote public safety and enhance customer service. Learn more at [www.windelsmarx.com](http://www.windelsmarx.com).