

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**

AUDITED FINANCIAL STATEMENTS

Years ended December 31, 2009 and 2008

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**

TABLE OF CONTENTS

	Page
Independent Auditor's Report	1
Financial Statements	
Balance Sheets	2
Statements of Operations	3
Statements of Changes in Members' (Deficit) Equity	4
Statements of Cash Flows	5
Notes to Financial Statements	6

RECEIVED
WORKERS' COMPENSATION
APR 29 2010
SELF INSURANCE OFFICE

INDEPENDENT AUDITOR'S REPORT

To the Board of Trustees and Members of the
Empire State Transportation Workers' Compensation Trust

We have audited the accompanying balance sheets of Empire State Transportation Workers' Compensation Trust (the "Trust") as of December 31, 2009 and 2008, and the related statements of operations, changes in members' (deficit) equity, and cash flows for the years then ended. These financial statements are the responsibility of the Trust's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 2 to the financial statements, New York State Workers' Compensation Laws impose an asset to liability requirement on group self-insurers, including the Trust. At December 31, 2009, the Trust does not meet the minimum regulatory standards and, accordingly, the Trust is deemed at an action level by the New York State Workers' Compensation Board. Also as more fully described in Note 1 to the financial statements, the Trust has terminated its status as a group self-insurer and as of January 1, 2009, the Trust no longer provides workers' compensation coverage and continues to operate in run-off status until all of its claim obligations have been fulfilled.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Empire State Transportation Workers' Compensation Trust as of December 31, 2009 and 2008, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 3 to the financial statements the Trust adopted guidance issued by the Financial Accounting Standards Board ("FASB") regarding accounting for uncertainty in income taxes.

UHY LLP

Albany, New York
April 21, 2010

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST
BALANCE SHEETS
December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
ASSETS		
Cash and cash equivalents	\$ 3,810,063	\$ 5,534,315
Investments	27,214,927	40,451,838
Contributions receivable	57,570	199,986
Prepaid expenses and other assets	32,098	72,623
Interest receivable	339,196	506,406
Reinsurance recoverable	2,369,135	2,043,050
Total assets	<u>\$ 33,822,989</u>	<u>\$ 48,808,218</u>
LIABILITIES		
Reserve for loss and loss adjustment expenses	\$ 40,311,804	\$ 42,272,371
Accrued New York State assessments	23,077,995	4,879,739
Accrued expenses	566,109	309,954
Uncertain tax position liability	775,000	
Contributions received in advance and refunds payable	5,739	17,039
Total liabilities	<u>64,736,647</u>	<u>47,479,103</u>
MEMBERS' (DEFICIT) EQUITY		
Members' (deficit) equity	<u>(30,913,658)</u>	<u>1,329,115</u>
Total liabilities and members' equity	<u>\$ 33,822,989</u>	<u>\$ 48,808,218</u>

See notes to financial statements.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
STATEMENTS OF OPERATIONS
Years Ended December 31, 2009 and 2008

	<u>2009</u>	<u>2008</u>
Revenues		
Contributions earned	\$ 1,561,344	\$ 24,100,591
Ceded premium - excess insurance	<u>(106,352)</u>	<u>(1,837,949)</u>
Net contributions earned	1,454,992	22,262,642
Investment income, net	1,535,086	1,967,036
Other income	<u>375</u>	<u>80</u>
Total revenues	<u>2,990,453</u>	<u>24,229,758</u>
Expenses		
Loss and loss adjustment expenses incurred, net of losses recoverable	10,691,176	23,843,850
Management, general and administrative expenses	1,568,491	5,612,271
New York State assessments	21,391,519	3,974,050
Dividends to members reduction	<u>-</u>	<u>(8,198,838)</u>
Total expenses	<u>33,651,186</u>	<u>25,231,333</u>
Loss before provision for income taxes	(30,660,733)	(1,001,575)
Provision for income taxes	<u>778,990</u>	<u>1,402</u>
Net loss	<u>\$ (31,439,723)</u>	<u>\$ (1,002,977)</u>

See notes to financial statements.

RECEIVED
WORKERS' COMPENSATION

APR 29 2010

SELF INSURANCE OFFICE
Page 3

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
STATEMENTS OF CHANGES IN MEMBERS' (DEFICIT) EQUITY
Years Ended December 31, 2009 and 2008

	Accumulated Other Comprehensive Income	Retained Earnings (Accumulated Deficit)	Total Members' Equity (Deficit)	Comprehensive Income (Loss)
Balance at December 31, 2007	\$ 795,947	\$ -	\$ 795,947	
Net loss		(1,002,977)	(1,002,977)	\$ (1,002,977)
Other comprehensive income				
Unrealized net holding gains arising during the year	1,556,370		1,556,370	1,556,370
Reclassification adjustment for net gains realized during the year	(20,225)		(20,225)	(20,225)
Total comprehensive income				<u>\$ 533,168</u>
Balance at December 31, 2008	2,332,092	(1,002,977)	1,329,115	
Net loss		(31,439,723)	(31,439,723)	\$ (31,439,723)
Other comprehensive loss				
Unrealized net holding losses arising during the year	(755,174)		(755,174)	(755,174)
Reclassification adjustment for net gains realized during the year	(47,876)		(47,876)	(47,876)
Total comprehensive loss				<u>\$ (32,242,773)</u>
Balance at December 31, 2009	<u>\$ 1,529,042</u>	<u>\$ (32,442,700)</u>	<u>\$ (30,913,658)</u>	

See notes to financial statements.

RECEIVED
WORKERS' COMPENSATION

APR 29 2010

SELF INSURANCE OFFICE

Page 4

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST
STATEMENTS OF CASH FLOWS
Years Ended December 31, 2009 and 2008**

	<u>2009</u>	<u>2008</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (31,439,723)	\$ (1,002,977)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Amortization of bond premium, net	40,469	44,245
Gain on sale of investments, net	(47,876)	(20,225)
Net change in assets and liabilities:		
Contributions receivable	142,416	150,343
Prepaid expenses and other assets	40,525	(46,005)
Interest receivable	167,210	(27,489)
Reinsurance recoverable	(326,085)	(1,245,615)
Reserve for loss and loss adjustment expenses	(1,960,567)	11,950,436
Accrued New York State assessments	18,198,256	1,107,581
Accrued expenses	256,155	258,616
Uncertain tax position liability	775,000	
Contributions received in advance and refunds payable	(11,300)	(902,864)
Members dividends payable	-	(8,198,838)
Net cash (used in) provided by operating activities	<u>(14,165,520)</u>	<u>2,067,208</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Cost of investments acquired	(1,500,000)	(13,269,927)
Proceeds from investments sold or matured	<u>13,941,268</u>	<u>12,194,985</u>
Net cash provided by (used in) investing activities	<u>12,441,268</u>	<u>(1,074,942)</u>
Net (decrease) increase in cash and cash equivalents	<u>(1,724,252)</u>	<u>992,266</u>
Cash and cash equivalents, beginning of the year	<u>5,534,315</u>	<u>4,542,049</u>
Cash and cash equivalents, end of the year	<u>\$ 3,810,063</u>	<u>\$ 5,534,315</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOWS INFORMATION		
Cash paid during the period for income taxes	<u>\$ 3,990</u>	<u>\$ 1,402</u>

RECEIVED
WORKERS' COMPENSATION

APR 29 2010

SELF INSURANCE OFFICE

See notes to financial statements.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 1 — ORGANIZATION

The Empire State Transportation Workers' Compensation Trust (the "Trust") was organized to create a nonprofit unincorporated association of transportation merchants within the State of New York, to constitute a workers' compensation self-insurance group under New York State Workers Compensation Laws Section 50, subdivision 3-a. The Trust, which commenced operations on January 1, 1995, was created to make available a self-insured workers' compensation program for transportation merchants of the State of New York, to establish, maintain, promote and enforce sound safety programs, and to provide a cost-effective market in which transportation merchants may obtain workers' compensation insurance coverage. The Trust is administered by a third party administrator (Note 9).

During 2008, the Board of Trustees voted to voluntarily terminate their status as a group self insurer for the Trust effective December 31, 2008 due to changes in New York State Workers' Compensation Laws which adversely affected the Trust's ability to provide workers' compensation coverage to its members without exposing them to financial risks associated with other self-insured groups (Note 9). The plan to terminate was ratified by a vote of the membership on January 29, 2009. The Trust notified the NYS Workers' Compensation Board of its decision to terminate their status on November 25, 2008. Accordingly, as of December 31, 2008, the Trust no longer provides Workers' Compensation coverage. The Trust continues to operate in a run-off status until all of its claim obligations for events that occurred prior to December 31, 2008 have been fulfilled.

The Trust has a contract with a third party administrator through December 2011 to manage the assets and liabilities of the Trust during its run off status.

NOTE 2 — REGULATORY REVIEW AND MANAGEMENT'S PLANS

The Trust is not in compliance with the assets to liabilities ratio as required by New York State Workers' Compensation Law, Section 50, subdivision 3a, Part 317.9 as currently enacted as of December 31, 2009. Group Self-insurers (trusts) who do not meet the ratio requirement are deemed under-funded and may be subject to regulatory action by the New York Workers' Compensation Board Chair.

As of December 31, 2009 the Trust has liabilities in excess of assets totaling \$30,913,658 which results primarily from the accrual of future New York State Assessments which total \$23,077,995 as of December 31, 2009. The financial statements and related notes have been prepared assuming that the Trust will continue as a going concern through its run-off status. The Trust's ability to continue as a going concern is dependent on its ability to manage and pay claims as submitted and reduce New York State Assessments through legislative reform and control its operating expenses.

The Trust's management will closely monitor the claims run off process including the cash flow necessary to meet its obligations. Trust's management believes that it has sufficient resources to meet its obligations for at least the next three years. If it determines the cash flow is not adequate to meet its current obligations the Trust will work with the Workers Compensation Board to determine the best course of action to remedy the situation. In addition to its judicial challenges, the trust is pursuing legislative reform regarding its liability for premium based assessments after it ceased to self-insure.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Trust considers cash and cash equivalents to be cash in the bank, money market funds and highly liquid securities with an original maturity of three months or less. From time to time, the Trust has on deposit with certain financial institutions, cash and cash equivalents which exceed the amount subject to federal deposit insurance. The Trust attempts to mitigate this risk by depositing its cash and cash equivalents with high credit quality financial institutions.

Investments

Investments in fixed maturities (U.S. Government and corporate obligations) are carried at fair value, based on quoted market prices. The Trust accounts for its investments in accordance with accounting for *Investments – Debt and equity securities*. The Trust classifies all investments as available-for-sale, and as such these marketable securities are carried at fair value and unrealized holding gains and losses on investments are excluded from income and reported as a separate component of members' (deficit) equity until realized. Interest income is recognized when earned. Amortization of bond discount and premium is recorded using the straight line method over the period from purchase date to maturity. Net amortization of bond premiums and discounts resulted in a reduction of investment income of approximately \$40,000 and \$44,000 in 2009 and 2008, respectively. Realized gains and losses for investments are included in income and determined using the specific identification method.

The Trust follows the accounting for fair value measurements and disclosures for financial assets, which defines fair value and establishes a hierarchy for inputs used in measuring fair value. Investments are valued and carried at fair value on a recurring basis and at December 31, 2009 and 2008, are valued at Level 1 inputs (quoted prices in active markets for identical assets or liabilities).

Contributions

Contributions earned are computed on a pro rata basis over the term of the underlying insurance certificates. All certificates issued by the Trust expire on December 31. The Trust provided for contribution adjustments to its members based upon actual payroll information and accrues such contributions in the year billed. Amounts received during the years ended December 31, 2009 and 2008 for payroll audits of previous years approximated \$1,561,000 and \$2,253,000, respectively.

Contribution receivables deemed uncollectable are written off to bad debt expense in the year they are deemed uncollectable. Bad debt expense was approximately \$368,600 and \$211,900 for the years ended December 31, 2009 and 2008, respectively.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008**

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Contributions (Continued)

As disclosed in Note 1, effective January 1, 2009, the Trust no longer provides Workers' Compensation coverage. Contributions 2009 relate to adjustments arising from prior year payroll audits.

Loss and Loss Adjustment Expenses

The actuarially determined reserve for loss and loss adjustment expenses includes an amount determined from loss reports of individual cases and an amount for losses incurred but not reported. The Trust discounts its reserve for loss and loss adjustment expenses. Such reserves are necessarily based on estimates (and industry trends data) and, while management believes that the amount is adequate, the ultimate liability may vary significantly from the estimated amounts in these financial statements, and could have a material effect on Members' dividends payable and/or Members' (deficit) equity in future periods. The methods for making such estimates and for establishing the resulting reserve are continually reviewed, and any adjustments are reflected in operations in the year of the change.

The reserve for loss and loss adjustment expenses includes an estimate for certain New York State assessments and charges. Recent changes in New York State legislation have had a material impact on these estimates (Note 9).

New York State Assessments

During June 2008, legislation was passed regarding the billing of certain New York State Assessments for self-insured groups. The legislation stipulated that, effective January 1, 2009, assessments for certain sections, will be billed to self-insured groups based on paid indemnity. An impact of the change on the December 31, 2008 financial statements was an increase to the reserve for Loss and Loss Adjustment Expenses.

Under the legislation it stipulated that self-insured groups be billed for certain assessment sections on a premium base. The premium base for self-insured groups who cease to self-insure is based on payroll at the time the group self-insurer ceased to self-insure reduced by a factor provided by New York State Workers Compensation Board, reflecting the reduction in the groups liabilities since ceasing to self-insure. The estimate for the accrual for premium based assessments was estimated based on payroll figures for 2008, current assessment rates and factors provided by the Workers' Compensation Board. The accrual was estimated through the actuary's determination of the number of years required to run off the outstanding claims of the Trust. The methods for making such estimates for the accrual for premium based assessments will be continually reviewed, and any adjustments are reflected in operations in the year of the change. An impact of the change on the December 31, 2009 financial statements was an increase to Accrued New York State Assessments and New York State Assessment expense.

No amounts were accrued as of December 31, 2008 because the information available was not sufficient to reasonably estimate the accrual for the premium based assessments, however during 2009 the data required for the estimate became available.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008**

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Dividends to Members

Prior to 2009, it was the policy of the Trust to declare on an annual basis, dividends payable to members equal to what would otherwise be taxable income to minimize the income tax exposure of the Trust. The actual payment of the dividends was based on the profit or loss within a policy year and the Trust as a whole. The Trust's intent was to wait two years after the close of a policy year before making any dividend payments on the policy year. If the policy year was profitable, the Trust authorized payment of a portion of the available surplus for the policy year to members in good standing for the year. The remaining surplus on the policy year was paid in subsequent years.

Previously declared but unpaid dividends may be rescinded. During 2008, the Trust rescinded previously declared dividends of \$8,198,838.

Income Taxes

Effective January 1, 2009 the Trust adopted guidance issued by the Financial Accounting Standards Board ("FASB") regarding accounting for uncertainty in income taxes. This guidance clarifies the accounting for income taxes by prescribing the minimum recognition threshold an income tax position is required to meet before being recognized in the financial statements and applies to all income tax positions. Each income tax position is assessed using a two step process. A determination is first made as to whether it is more likely than not that the income tax position will be sustained, based upon technical merits, upon examination by the taxing authorities. If the income tax position is expected to meet the more likely than not criteria, the benefit recorded in the financial statements equals the largest amount that is greater than 50% likely to be realized upon its ultimate settlement.

Subsequent to the adoption of this guidance the Trust has elected to record income tax and related interest as components of the provision for income tax expense totaling \$775,000. Total amount of interest recognized in the statement of operations for the year ended December 31, 2009 was approximately \$371,200 which is included in the income tax expense.

Deferred taxes are provided on the liability method whereby deferred taxes are recognized for deductible temporary differences and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Subsequent Events

In preparing these financial statements, management has evaluated events and transactions for potential recognition or disclosure through April 21, 2010, the date the financial statements were available for issuance.

**RECEIVED
WORKERS' COMPENSATION**

APR 29 2010

SELF-INSURANCE OFFICE

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 4 — INVESTMENTS

The amortized cost, fair value and gross unrealized gains and losses of investments by major security type at December 31, 2009 and 2008 are as follows:

	2009			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Government obligations	\$ 21,511,822	\$ 1,250,122	\$ 20,399	\$ 22,741,545
Corporate obligations	4,174,063	299,319	-	4,473,382
	<u>\$ 25,685,885</u>	<u>\$ 1,549,441</u>	<u>\$ 20,399</u>	<u>\$ 27,214,927</u>
	2008			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Government obligations	\$ 33,590,017	\$ 2,196,833	\$ 13,106	\$ 35,773,744
Corporate obligations	4,529,729	156,651	8,286	4,678,094
	<u>\$ 38,119,746</u>	<u>\$ 2,353,484</u>	<u>\$ 21,392</u>	<u>\$ 40,451,838</u>

Proceeds from the sale and maturity of investments were \$13,941,268 for the year ended December 31, 2009, resulting in gross realized gains of \$51,095 and realized losses of \$3,219. Proceeds from the sale and maturity of investments were \$12,194,985 for the year ended December 31, 2008, resulting in gross realized gains of \$20,914 and realized losses of \$689.

The scheduled maturities of fixed maturity investments at December 31, 2009 are as follows:

	Amortized Cost	Fair Value
Due within one year or less	\$ 1,759,846	\$ 1,802,097
Due after one year through five years	14,765,572	15,825,869
Due after five years through ten years	8,367,426	8,811,410
Thereafter	793,041	775,551
Total	<u>\$ 25,685,885</u>	<u>\$ 27,214,927</u>

As discussed in Note 9 during 2009 and 2008 the Trust pledged \$900,000 in investments as collateral for the surety bond as of December 31, 2009 and 2008.

RECEIVED
WORKERS' COMPENSATION

APR 29 2010

Page 10

SELF INSURANCE OFFICE

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 5 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES

The components of the reserve for loss and loss adjustment expenses at December 31, 2009 and 2008:

	<u>2009</u>	<u>2008</u>
Reserve for reported losses	\$ 30,384,601	30,565,073
Reserve for incurred but not reported losses	<u>9,927,203</u>	<u>11,707,298</u>
Total reserve for loss and loss adjustment expenses	<u>\$ 40,311,804</u>	<u>\$ 42,272,371</u>

To reflect the time value of money, the reserve for loss and loss adjustment expenses has been discounted using an interest rate of 4.25% and 4.75% for 2009 and 2008, respectively. The undiscounted reserve as of December 31, 2009 and 2008 was \$46,561,355 and \$49,840,139, respectively.

The reserve for loss and loss adjustment expenses includes approximately \$2,704,800 and \$1,161,700 related to New York State assessments for December 31, 2009 and 2008, respectively.

The following table presents an analysis of the reserve for loss and loss adjustment expenses, including an estimate of future losses and a reconciliation of beginning and ending reserve balances for 2009 and 2008. The reserve is stated on a net basis after deductions for losses recoverable from reinsurers and subrogation.

	<u>2009</u>	<u>2008</u>
Discounted reserve for loss and loss adjustment expenses, beginning of the year, gross	\$ 42,272,371	\$ 30,321,935
Less: reinsurance recoverable, beginning of the year	<u>(2,043,050)</u>	<u>(797,435)</u>
Discounted reserve for loss and loss adjustment expenses, beginning of the year, net	<u>40,229,321</u>	<u>29,524,500</u>
Incurred provision for loss and loss adjustment expenses		
Provision for insured events of the current year	-	16,240,118
Increase in provision for insured events of prior years	<u>10,691,176</u>	<u>7,603,732</u>
	<u>10,691,176</u>	<u>23,843,850</u>
Payments		
Loss and loss adjustment expenses attributable to insured events of the current year		(3,372,378)
Loss and loss adjustment expenses attributable to insured events of prior years	<u>(12,977,828)</u>	<u>(9,766,651)</u>
	<u>(12,977,828)</u>	<u>(13,139,029)</u>
Discounted reserve for loss and loss adjustment expenses, end of the year, net	37,942,669	40,229,321
Add: reinsurance recoverable, end of the year	<u>2,369,135</u>	<u>2,043,050</u>
Discounted reserve for loss and loss adjustment expenses, end of the year, gross	<u>\$ 40,311,804</u>	<u>\$ 42,272,371</u>

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 5 — RESERVE FOR LOSS AND LOSS ADJUSTMENT EXPENSES (Continued)

Included in loss and loss adjustment expenses incurred in the statement of operations is subrogation received of \$1,514,305 and \$1,625,954 for the years ended December 31, 2009 and 2008, respectively.

Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its voluntary termination of its status as a group self-insurer (Notes 1 and 2). The agreement calls for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses includes an estimate of the claims portion of the costs to administer the Trust after December 31, 2008.

NOTE 6 — INCOME TAXES

The provision for income tax expense consists of the following:

	<u>2009</u>	<u>2008</u>
Current		
Federal	\$ 290,500	\$ -
New York State Franchise taxes	488,490	1,402
	<u>\$ 778,990</u>	<u>\$ 1,402</u>

The reconciliation of income taxes calculated at the Federal tax statutory rate to the Trust's effective rate is set forth below:

	<u>2009</u>		<u>2008</u>	
	\$	%	\$	%
Tax at federal statutory rate	\$ (10,424,649)	34%	\$ (340,536)	34%
New York State Franchise Tax	3,990	0%	1,402	0%
Valuation allowance additions	10,424,649	-34%	340,536	-34%
Adjustment for uncertain tax positions	775,000	-3%	-	0%
	<u>\$ 778,990</u>	<u>-3%</u>	<u>\$ 1,402</u>	<u>0%</u>

At December 31, 2009, the Trust has net operating losses (NOL's) carryforwards of approximately \$12.1 million available to offset future taxable income. In addition to the NOL's the Trust also has deferred tax assets related to future New York State assessments of \$19.5 million. Deferred tax assets related to the net operating losses and future New York State assessments at December 31, 2009 have been fully offset by a valuation allowance due to the uncertainty as to their realizability. The NOL's begin to expire in 2028. The Trust has no other deferred tax assets or liabilities.

The uncertain tax position liability may be reduced because the statute of limitations has expired or the tax position is resolved with the taxing authority. It is reasonably possible that during the next twelve months the total amount of unrecognized tax benefits may be reduced by \$659,000.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 6 — INCOME TAXES (Continued)

None of the Trust's federal or state income tax returns is currently under examination by the Internal Revenue Service ("IRS") or state authorities. However years 2006 and later remain subject to examination by the IRS and respective states.

NOTE 7 — DISTRIBUTION TO MEMBERS

During the years ended December 31, 2009 and 2008 the Trust reduced dividends payable in the amount of \$0 and \$8,198,838, respectively, based upon review of prior year claims experience. No dividends were paid during 2009 and 2008.

NOTE 8 — EXCESS INSURANCE

The Trust, through the Administrator, has obtained specific and aggregate excess insurance from an outside carrier for each policy year of the Trust. Under this arrangement, the Trust's losses in excess of approximately \$4,700,000 to \$28,200,000 in aggregate or \$300,000 to \$600,000 per accident per insured will be covered by the excess insurance depending on the policy year's coverage.

In the event the Trust's excess insurer is unable to meet its obligations under the excess insurance agreement, the Trust would continue to have primary liability to members for losses incurred.

NOTE 9 — COMMITMENTS AND CONTINGENCIES

Management Agreement and Commissions

The Trust has entered into an Administrative Agreement with a third-party administrator ("Administrator") which expires December 31, 2011. Effective January 1, 2009, the Administrative Agreement was amended to meet the needs of the Trust based on its terminated status (Note 1). The agreement calls for the Administrator to be paid for claims management on an annual fee per claim basis. The reserve for loss and loss adjustment expenses includes an estimate of the claims cost portion of the dissolution costs. Administrative services relating to accounting and billing services performed during the run off period will be billed to the Trust on an hourly basis.

Through December 31, 2008 the Administrator provided various services including loss control, claims management, marketing, accounting and general administration. The Administrator was paid fees based on a percentage of the total annual contributions earned, with a prescribed minimum for November and December of 2008. The Administrator also received a commission for obtaining insurance coverage for the Trust. The Trust incurred management fees and commission expense of \$1,597,394 and \$3,717,968 for the years ended December 31, 2009 and 2008, respectively.

Through December 31, 2008, the Administrator also acted as a sales broker and along with other agents, recruited transportation merchants as members of the Trust. For the years ended December 31, 2009 and 2008, the Trust incurred commission expense to the Administrator and agents of \$91,235 and \$1,481,545, respectively. Commission expenses incurred in 2009 were a result of premium audit adjustments.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 9 — COMMITMENTS AND CONTINGENCIES (Continued)

Surety Bond

As is customary in a workers' compensation regulatory structure, the Trust is required to provide a surety bond (the "Surety Bond") to the Trust's state regulator as a condition to conducting workers' compensation business in the State. Accordingly, the Trust is the principal on a Surety Bond pledged to the State of New York in the amount of \$900,000. Should the State have to draw on the Surety Bond, the Trust is obligated to reimburse the surety company for any losses and costs incurred by them, up to the maximum amount of the Surety Bond. The Trust pledged \$900,000 in investments as collateral for the surety bond during 2009 and 2008.

Indemnity Agreement

The Trust has entered into an indemnity agreement with each member to provide risk management services and workers' compensation and employer's liability coverage. The agreement stipulates, among other things, that each member is jointly and severally liable for the workers' compensation and employer's liability obligations of the Trust and its members which were incurred during the member's period of membership in the Trust, irrespective of the subsequent termination of the member's membership in the Trust, the insolvency or bankruptcy of another member of the Trust, or other facts or circumstances. However, recourse for any and all payments of workers' compensation and employer's liability benefits covered by the Trust's certificate of coverage to a member shall first be made from the Trust's assets.

New York State Assessments

Under New York State regulatory laws, the Trust is required to pay for its share of various assessments to the Workers' Compensation Board (the "Board") for certain obligations, including but not limited to the costs of the Board's operations, for second injury funds, and for uninsured claimants. Typically, such assessments are allocated to the Trust based upon its proportion of business written in New York State. As a self-insured group Trust in New York State, the Trust may be subjected to additional assessments.

Through an assessment under Section 50-5 of the New York State Workers' Compensation Law, the Board has taken the position that the Trust is obligated to contribute a share of anticipated losses of self-insurance groups that are in default, have closed or have otherwise failed to meet their obligations. The Board has not declared that there is any limit to the Trust's potential assessments for such failed self-insurance groups.

An estimated reserve for the Trust's exposure to the anticipated losses of the defaulted trusts has been included in the reserve for loss and loss adjustment expenses. The Trust's Board is currently challenging the Board's authority to assess the Trust for its share of the liabilities of the defaulted trusts through various judicial actions.

New York State regulatory law was passed in June 2008 which stipulated that all trusts, both active and inactive, pay certain premium based assessments during any State fiscal years in which the trust made indemnity claim payments. The premium based assessments will be determined based on a "factor" of premium in the Trust during its last active year. An accrual for future premium based assessments has been recorded in the financial statements as of December 31, 2009. The Trust is currently challenging the constitutionality of these assessments.

**EMPIRE STATE TRANSPORTATION
WORKERS' COMPENSATION TRUST**
NOTES TO FINANCIAL STATEMENTS
December 31, 2009 and 2008

NOTE 10 — RELATED PARTY

All Trustees on the Board were employed by covered members of the Trust. Each Trustee receives a nominal fee for serving on the Board; during 2009 and 2008, these fees totaled \$34,300 and \$41,900, respectively. Trustees are also reimbursed for travel costs incurred to attend the meetings.

NOTE 11 — SUBSEQUENT EVENT

On April 14, 2010, an acting State Supreme Court Justice ruled that the 2008 assessments billed to the Trust and other trusts to cover the anticipated losses of self-insured groups that are in default, have closed or have otherwise failed to meet their obligations; to be unconstitutional, and to permanently enjoin the WCB from enforcing those assessments. It is expected that the WCB will appeal this ruling. As a result, the impact to the Trust has not yet been determined or recorded in the financial statements as of December 31, 2009.

RECEIVED
WORKERS' COMPENSATION
APR 29 2010
SELF INSURANCE OFFICE