MEMORANDUM TO: New York State Joint Legislative Committee

FROM: Richard Bishop, UPS State and Local Income Tax Director

DATE: 02/06/2014

RE: New York State Apportionment Proposal

This memo presents a proposal to modify current apportionment rules for certain trucking companies.

Apportionment of Trucking Companies

The revisions enacted in 2014 had a significant impact on UPS New York State Income Tax liabilities. Under prior law, transportation companies were not permitted to file a combined return with non-transportation companies.[1] Also under prior law trucking companies apportioned their income to New York using a mileage fraction.[2] The only change to the apportionment calculation enacted in 2014 is to source trucking company *receipts* to New York using a mileage fraction.[3] UPS does not object to the change to a single unitary combined return, but the inclusion of the receipts of the trucking company in the apportionment fraction of the combined group has a disproportionate impact on the income apportioned to New York of the overall combined group. Though the trucking company recognizes a significant amount of customer revenue, it remains a lower margin unit when compared to other UPS businesses.

UPS asserts that "pass-through miles" should be excluded from the New York apportionment fraction of trucking companies. "Pass-through miles" are defined as miles in New York State that have no connection to the transportation of goods originating or destined for New York. For example, if a shipment originates in Massachusetts and is destined for Ohio significant New York miles – pass-through miles - will be incurred to deliver the shipment to Ohio. The receipts recognized by the trucking company have no connection to New York. Arguably, the trucking company should (and does through motor fuel taxes and apportioned registration fees) pay for the use of New York State expressways, but this activity should not impact the income tax liability of a trucking company.

[1] Article 9-A §211.4(a)(3)
[2] Article 9-A §210.3(a)(8)
[3] Article 9-A §210-A(6)

Unfortunately, there is no realistic way to calculate pass-through miles on a shipment by shipment basis. Instead UPS proposes a simpler solution. Modify §210-A(6) to state: "...the numerator of which is <u>80% of</u> the miles in such business within the state during..." This change mitigates the impact of pass-through miles in the apportionment fraction. This solution is not unique. In fact, there is similar language in the apportionment calculation of airlines in New York – mitigating the impact of connecting airline traffic.

If you have any questions please do not hesitate to contact me at (404) 828-6349 or at rbishop@ups.com. Alternatively, you may also contact Frank Sanzillo at francisjsanzillo@gmail.com.
Thank you for consideration of our proposal.