

## **Metropolitan Commuter Transportation Mobility Tax**

Chapter 25 of the Laws of 2009 added Article 23 to the Tax Law which establishes the metropolitan commuter transportation mobility tax (MCTMT). This tax will be administered by the New York State Tax Department, and the proceeds from this tax will be distributed to the Metropolitan Transportation Authority. A summary of the MCTMT follows.

### **General**

The MCTMT is imposed on certain employers and self-employed individuals engaging in business within the metropolitan commuter transportation district. This new law applies to:

- employers (other than public school districts) beginning on or after March 1, 2009;
- employers that are public school districts within the metropolitan commuter transportation district beginning on or after September 1, 2009; and
- self-employed individuals for tax years beginning on or after January 1, 2009.

The *Metropolitan Commuter Transportation District (MCTD)* is defined under section 1262 of the Public Authorities Law. The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, and Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

Any exemption from tax specified in any other New York State law **does not** apply to this tax. For example, if another law states that a certain New York public authority is exempt from any tax imposed by New York State or by any political subdivision of the state, that exemption does not apply to the MCTMT.

No tax credit(s) may be used to reduce the amount of the MCTMT due. In addition, this law authorizes the Commissioner of Taxation and Finance to require that all MCTMT reports be filed electronically and all payments of MCTMT be paid electronically.

### **Employers**

Effective March 1, 2009, certain employers that have payroll expense within the MCTD are subject to the MCTMT. However, employers that are public school districts within the MCTD are not subject to the MCTMT until September 1, 2009.

### **Definitions**

The following definitions apply to the MCTMT on employers:

- *Employer* means any employer required by section 671 of the Tax Law to deduct and withhold New York State income tax from wages paid to employees, that has a payroll expense in excess of \$2,500 in any calendar quarter. However, the following employers are not subject to the MCTMT: an agency or instrumentality of the United States, the United Nations, or an interstate agency or public corporation created under an agreement or compact with another state or Canada.
- *Public school district* means a New York public school district. *Public school district* does not mean a special act school district as defined in section 4001 of the Education Law, a Board of Cooperative Educational Services (BOCES), or a charter school.
- *Payroll expense* for covered employees subject to federal social security taxes means the total wages and compensation as defined in section 3121 of the Internal Revenue Code (IRC), without regard to section 3121(a)(1). *Payroll expense* for covered employees subject to the railroad retirement tax means the total wages and compensation as defined in section 3231 of the IRC, without regard to section 3231(e)(2)(A)(i).

Section 3121 of the IRC defines wages and compensation subject to federal social security taxes. However, in computing the payroll expense, the annual cap on the amount of wages and compensation of a covered employee subject to social security tax contained in section 3121(a)(1) of the IRC does not apply.

Section 3231 of the IRC defines wages and compensation subject to federal railroad retirement tax. However, in computing payroll expense, the annual cap on the amount of wages and compensation of a covered employee subject to the railroad retirement tax contained in section 3231(e)(2)(A)(i) of the IRC does not apply.

- *Covered employee* means an employee (including a statutory employee) who is employed within the MCTD. See *Determining if an employee is a covered employee* below.

### **Determining if an employee is a covered employee**

An employee is considered to be a *covered employee* if the employee's services are allocated to the MCTD. To determine if an employee's services are allocated to the MCTD, the law provides for the application of the following successive tests. If the application of a test results in the allocation of all services to the MCTD, no further test can be used. Otherwise, proceed to the next succeeding test.

- 1) **Localization** – All of an employee's services are allocated to the MCTD if the services are localized there. Services are deemed localized within the MCTD if they are either performed entirely within the MCTD or are performed both in and out of the MCTD, but those performed outside the MCTD are incidental to the employee's

services performed within the MCTD (for example, the services are temporary or transitory in nature, or consist of isolated transactions).

- 2) **Base of operations** – If an employee’s services are not localized in the MCTD, all services are allocated to the MCTD if the employee’s base of operations is in the MCTD. (This test cannot be applied if the employee has either more than one base or no base of operations.)

*Base of operations* means the place at which the employee is not continuously located, but from which the employee customarily starts out to perform his or her functions in or out of the MCTD. The *base of operations* is where the employee customarily returns in order to receive instructions from his or her employer, communications from other persons, or to replenish stock and materials, to repair equipment used, or to perform any other function necessary in the exercise of his or her trade or profession.

- 3) **Place of direction and control** – If neither of the two preceding tests results in a clear allocation of services, and (1) direction and control emanates from only the MCTD, and (2) the employee performs some services within the MCTD, then all services are allocated to the MCTD.

*Direction and control* means the place from which the employer directs and controls the activities of the employees. It is not necessarily the location of the principal office, but rather the point from which basic authority over the supervision of services emanates (for example, the place from which job assignments are made and/or instructions are issued, or the place at which personnel and payroll records are maintained).

- 4) **Residence** – If none of the preceding tests results in a clear allocation of services, all of the employee’s services are allocated to the MCTD if the employee resides in the MCTD and performs some services in the MCTD.

### **Amount of tax**

The MCTMT is imposed at a rate of .34% of an employer’s payroll expense for all covered employees for each calendar quarter. An employer cannot allocate payroll expenses for covered employees who work both in and out of the MCTD for purposes of computing the MCTMT. That is, if an employee is considered a covered employee, all the payroll expense for that employee is subject to the tax.

### **Prohibition from deducting MCTMT from employees’ wages or compensation**

An employer is prohibited from deducting from the wages or compensation of an employee any amount that represents all or any portion of MCTMT.

## Payment of tax

Except for Promptax filers, the MCTMT must be reported and paid for each calendar quarter by the last day of the month following the end of the quarter as follows (Promptax filers see *Promptax filers* below):

Quarter	Due date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

When the due date falls on a Saturday, Sunday, or legal holiday, the employer may report and pay on the next business day. There are no extensions of time allowed for employers to report or pay the MCTMT.

If an employer overpays its MCTMT, the employer may apply for a refund. However, the department will keep all or part of an overpayment of the MCTMT if the employer owes a past-due legally enforceable debt to a New York State agency, or a New York City tax warrant judgment debt. The department will also keep all or a part of a refund or overpayment if the employer owes a past-due legally enforceable debt to another state, provided that state has entered into a reciprocal agreement with New York State.

**Special rule for 2009** – The initial MCTMT report and payment for employers not required to pay withholding tax through the Promptax program, is due by November 2, 2009 (due to October 31, 2009, falling on a Saturday). This initial payment must include the MCTMT due for the period March 1, 2009, through September 30, 2009 (September 1, 2009 through September 30, 2009, for public school districts within the MCTD). There will be no penalty on amounts attributable to the tax period ending September 30, 2009, provided the employer has made the initial payment by November 2, 2009. The payment due for the period October 1, 2009, through December 31, 2009, is due by February 1, 2010 (due to January 31, 2010, falling on a Sunday).

## Promptax filers

Employers, other than public school districts, who are required to enroll in the Promptax program for New York State withholding tax purposes are required to make payments of the MCTMT on the same dates the withholding tax payments are remitted under the Promptax program.

Employers who are **not** required to enroll in the Promptax program for withholding tax purposes, but do so voluntarily, are not required to make MCTMT payments on the same date as they make their Promptax payments. However, they may choose to do so. If an employer

chooses not to, the employer must make MCTMT payments on the dates as described under *Payment of tax* on page 4.

**Special rule for 2009** – An employer who is required to remit withholding tax payments through the PromptTax program, or an employer who chooses to remit withholding tax payments through the PromptTax program and who chooses to make MCTMT payments on the PromptTax withholding tax schedule, must submit the initial MCTMT payment for 2009 on the same date its first PromptTax withholding tax payment is due on or after October 31, 2009. This initial payment must include the MCTMT due for the period that begins on March 1, 2009, and ends on the payroll date for which the first PromptTax payment occurring on or after October 31, 2009, is made. There will be no penalty on the amount due with the initial payment provided the employer makes the initial payment by the same date that its first PromptTax withholding tax payment is due on or after October 31, 2009.

### **Individuals with net earnings from self-employment**

Effective for tax years beginning on or after January 1, 2009, individuals (including partners in partnerships and members of limited liability companies (LLCs) that are treated as partnerships) who have net earnings from self-employment allocated to the MCTD are subject to the MCTMT. However, if the individual's net earnings from self-employment allocated to the MCTD are \$10,000 or less for the tax year, no tax is due. The \$10,000 threshold must be applied on an individual basis regardless of the taxpayer's filing status.

### **Definitions**

The following definitions apply to the MCTMT for self-employed individuals:

- *Net earnings from self-employment* means an individual's net earnings from self-employment as defined under section 1402(a) of the Internal Revenue Code (IRC).

Section 1402(a) defines self-employment income subject to social security taxes. However, in computing the amount of net earnings from self-employment subject to the MCTMT, the annual limitation on the amount of net earnings from self-employment subject to social security tax under section 1402(b)(1) does not apply. Accordingly, this is the amount computed on federal Schedule SE (Form 1040), *Self-Employment Tax*, before multiplying by 92.35%.

- *Net earnings from self-employment allocated to the MCTD* means an individual's net earnings from self-employment that are attributable to a business carried on within the MCTD.
- *Business activity* is carried on within the MCTD if an individual has, maintains, operates, or occupies desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place located in the MCTD where his or her business matters are systematically and regularly carried on. Similarly, business activity is carried on outside

of the MCTD if the individual has, maintains, operates, or occupies desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place located outside the MCTD where his or her business matters are systematically and regularly carried on.

### **Allocation of net earnings from self-employment**

If all of an individual's business activity is carried on within the MCTD, all of the individual's net earnings from self-employment are allocated to the MCTD. If the individual carries on business activities both in and out of the MCTD, only a portion of the individual's net earnings from self-employment are allocated to the MCTD.

An individual who has net earnings from self-employment from activity both in and out of the MCTD must allocate those net earnings for purposes of determining whether or not the \$10,000 annual threshold has been met and the amount of MCTMT due. For this purpose, net earnings are allocated using the same rules that apply for purposes of the allocation of business income earned in and out of New York State under the personal income tax rules. Accordingly, if the individual keeps books and records that fairly and equitably show net earnings from self-employment from business activity in the MCTD, the individual may determine the part to be allocated to the MCTD from those books and records.

If the books and records do not fairly and equitably show the net earnings from self-employment in the MCTD, the individual must allocate his or her net earnings from self-employment using the statutory formula method (business allocation percentage) or another method that has been authorized by the New York State Commissioner of Taxation and Finance.

The amount to be allocated to the MCTD using the statutory formula method is that part of total net earnings from self-employment that results from multiplying total net earnings by the average of a property percentage, a payroll percentage, and a gross income percentage. (For an illustration of the statutory formula method, see Form Y-203, *Yonkers Nonresident Earnings Tax Return*, Schedule C, and replace the word *Yonkers* with *MCTD*.)

Partners in a partnership and members of an LLC treated as a partnership will need to obtain allocation information, if applicable, from the partnership or LLC. See *Partnerships and partners* on page 8.

### **Amount of tax**

The amount of the MCTMT is .34% of the total net earnings from self-employment allocated to the MCTD for the tax year.

### **Estimated MCTMT payments**

Individuals, including partners in a partnership and members of an LLC treated as a partnership, who will owe **any** MCTMT for the tax year must make estimated tax payments. The

estimated MCTMT payments are due on April 30, July 31, and October 31 of the current year, and January 31 of the following calendar year. An individual may estimate and pay all his or her estimated MCTMT with the first payment or pay it in four equal installments. When the due date falls on a Saturday, Sunday, or legal holiday, the individual may pay on the next business day.

The estimated tax rules that apply for purposes of New York State personal income tax apply to the MCTMT. However, there is no exception from estimated MCTMT payments for taxpayers who expect to owe less than \$300 of MCTMT for the tax year. Therefore, to avoid a penalty for underpayment of the MCTMT for the tax year, the individual's total amount of MCTMT payment(s) must be:

- at least 90% (66 2/3% for farmers and fishermen) of the amount of the MCTMT due for the tax year; or
- 100% of the MCTMT reported for the prior tax year (110% of that amount if the individual is not a farmer or a fisherman and the individual's net earnings from self-employment allocated to the MCTD for the prior tax year is more than \$150,000). However, this rule does not apply for tax year 2009.

The estimated MCTMT payments **cannot be combined** with any estimated New York State personal income tax payments the taxpayer may be required to make.

**Special rule for tax year 2009** – The MCTMT is imposed on an individual's net earnings from self-employment allocated to the MCTD if those earnings are more than \$10,000 for tax year 2009. However, the individual's MCTMT **liability for the 2009 tax year** will be computed using ten-twelfths of the total net earnings from self-employment allocated to the MCTD. In the case of a partner in a partnership that operates on a fiscal year basis, the partner will include in the computation ten-twelfths of the net earnings from self-employment allocated to the MCTD for the partnership's entire fiscal year that ends in the 2009 tax year.

If an individual is subject to the MCTMT for 2009, the initial estimated tax payment is due by November 2, 2009 (due to October 31, 2009, falling on a Saturday). To estimate the initial MCTMT payment, use the following formula:

- Step 1. Estimate the individual's 2009 net earnings from self-employment allocated to the MCTD.
- Step 2. Divide the amount from *Step 1* by 12.
- Step 3. Multiply the result from *Step 2* by 10.
- Step 4. Multiply the result from *Step 3* by .34% (.0034).
- Step 5. Multiply the result from *Step 4* by 75% (.75). The result of this step is the amount of the initial estimated tax payment.

There will be no penalty for the underpayment of estimated tax for periods prior to October 31, 2009, provided the individual includes the total estimated tax due for the period January 1, 2009, through September 30, 2009, in the October 31 payment.

The estimated MCTMT payment due for the period October 1, 2009, through December 31, 2009, if applicable, is due by February 1, 2010 (due to January 31, 2010, falling on a Sunday). To estimate the payment due by February 1, 2010, if applicable, use the formula on page 7, but substitute 25% (.25) for 75% in *Step 5*.

### **Annual MCTMT reconciliation**

An individual with net earnings from self-employment must file a reconciliation return to reconcile his or her MCTMT estimated tax payments. The MCTMT reconciliation return is due on or before the 30<sup>th</sup> day of the fourth month following the close of the tax year. (For calendar-year taxpayers, this will be April 30.) When the due date falls on a Saturday, Sunday, or legal holiday, the individual reconciliation return may be submitted on the next business day.

The MCTMT reconciliation return must indicate the actual amount of the MCTMT due for the tax year and the estimated payments made during the year. Any additional MCTMT due must be remitted with the reconciliation return.

Any overpayment of the MCTMT will be refunded or may be applied to the individual's estimated MCTMT for the next tax year. However, the department will keep all or part of your overpayment (refund) if you owe a New York State tax liability or a New York City or Yonkers personal income tax liability; if you owe past-due support or a past-due legally enforceable debt to the Internal Revenue Service (IRS) or a New York State agency, or to another state; if you defaulted on a governmental education loan, state university, or city university loan; or if you owe a New York City tax warrant judgment debt.

If an individual with net earnings from self-employment cannot meet the due date for filing the MCTMT reconciliation return, he or she will be able to request an automatic extension of time to submit the reconciliation return. However, an extension of time to submit the MCTMT reconciliation return does not extend the time to pay; full payment of any balance due must be made with the request for extension.

**Note:** If an individual with net earnings from self-employment also has employees, the individual may also be subject to the MCTMT on his or her payroll expense for covered employees (see *Employers* on page 1).

### **Partnerships and partners**

If a partnership (including an LLC treated as a partnership) is doing business within the MCTD, each partner will be subject to the MCTMT based on his or her share of the partnership's net earnings from self-employment allocated to the MCTD if his or her net earnings from self-employment allocated to the MCTD is more than \$10,000 for the tax year (see *Individuals with net earnings from self-employment* on page 5).

The partnership must provide either the actual amount of net earnings from self-employment allocated to the MCTD or the allocation percentage to each partner so that the partner can determine the amount of the MCTMT due. To determine the amount of net earnings from self-employment allocated to the MCTD or the allocation percentage, see the methods described in *Allocation of net earnings from self-employment* on page 6. For detailed information on allocating partnership income from business carried on both in and out of the MCTD, see the instructions for the *New York State allocation schedule* in Form IT-204-I, *Instructions for Form IT-204*, and replace *New York State* with *MCTD*.

### **Group returns for partnerships**

As an alternative to each partner making estimated MCTMT tax payments and filing separate reconciliation returns, a partnership that meets certain conditions may file one group reconciliation return on behalf of its partners who elect to participate in the group return. A partnership that chooses to file a group reconciliation return must also make group estimated tax payments on behalf of the electing partners. Further information regarding group returns will be made available on the Tax Department Web site ([www.nystax.gov](http://www.nystax.gov)) as it is developed.

### **Estimated MCTMT payments on behalf of nonresident partners**

Partnerships that do business within the MCTD are required to make estimated MCTMT payments on behalf of individual partners who are nonresidents of New York State except in the following circumstances:

- Estimated tax payments are not required for any partner whose estimated MCTMT required to be paid for the tax year by the partnership is \$300 or less.
- Estimated tax payments are not required for any partner if the partnership files a group return and the partner has elected to be included on the group return.

Additionally, estimated MCTMT payments are not required for any partner that certifies to the partnership that the partner will comply in his or her individual capacity with the department's MCTMT estimated tax filing requirements.

Estimated MCTMT payments **cannot be combined** with any estimated New York State personal income tax payments the partnership may be required to make on behalf of nonresident partners.

### **Modifications for the MCTMT on New York State tax returns and reports**

When preparing New York State tax returns, any deduction permitted for federal income tax purposes for the MCTMT must be added back, and any refund of the MCTMT must be subtracted, for purposes of computing New York State taxes imposed by Articles 9-A, 13-A, 22, 32, and 33 of the Tax Law (the corporation franchise tax, the petroleum business tax, the personal income tax, the bank franchise tax, the insurance franchise tax, and the tax on unrelated

business income); and sections 11-602, 11-641, 11-712, and 11-1718 of the Administrative Code of the City of New York (the general corporation tax, the bank tax, and the personal income tax).

A partnership must provide each partner with the partner's share of any addition or subtraction modification relating to the MCTMT.

### **Penalties and interest**

The penalties that apply to the personal income tax under Article 22 of the Tax Law also apply to the MCTMT. These penalties may include, but are not limited to: late filing penalty, late payment penalty, failure to file penalty, and penalty for underpayment of estimated tax (self-employed individuals only). Interest will be charged on any MCTMT that is not remitted on or before the payment due date.

### **Additional information on procedures for reporting and paying**

Additional information on the requirements and procedures for reporting and paying the MCTMT will be made available on the Tax Department's Web site as they are developed. To receive e-mail notifications containing links to newly posted MCTMT information, sign up for the *Subscription Service* through the Tax Department Web site ([www.nystax.gov](http://www.nystax.gov)).

**NOTE:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.