



## *Tax Facts*

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### **New Metropolitan Commuter Transportation Mobility Tax**

The new Metropolitan Commuter Transportation Mobility Tax (MCTMT) is imposed on certain employers and self-employed individuals engaging in business within the metropolitan commuter transportation district (MCTD). The MCTD includes the five boroughs that comprise NYC and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess and Westchester. This tax will be administered by the New York State Tax Department and the proceeds will be distributed to the Metropolitan Transportation Authority.

On June 1, 2009, the Department of Taxation and Finance issued a Technical Service Bureau Memorandum (TSB-M-09(1) MCTMT) which provided guidance on the application and calculation of the MCTMT. This issue of ODMD's *Tax Facts* includes this recent guidance in our analysis.

#### **Effective Date:**

Employers (other than public school districts) - beginning on or after March 1, 2009.

Employers that are public school districts located within the MCTD - beginning on or after September 1, 2009.

Self-employed individuals (including active partners in partnerships and LLC's treated as a partnership) - for tax years beginning on or after January 1, 2009.

#### **Amount of Tax:**

The MCTMT is imposed at a rate of .34% of an employer's payroll expense for covered employees for each quarter. An employer cannot allocate payroll expense for covered employees who work both in and out of the MCTD for purposes of calculating their MCTMT. If an employee is considered a covered employee, all of the payroll expense for that employee is subject to this tax.

Self-employed individuals are also taxed at .34% of their net self-employment earnings allocated to the MCTD provided such earnings exceed \$10,000 for the year. However, the tax for the initial 2009 year will be computed at ten-twelfths of the amount for the full year.

The new law specifically prohibits employers from deducting any portion of the MCTMT from the compensation of an employee. Furthermore, the MCTMT paid cannot be deducted on any New York State tax returns filed under Articles 9-A (corporate franchise), 13-A (petroleum business), 22 (individuals), 32 (bank franchise) and 33 (unrelated business income), nor on New York City returns for the general corporation tax, bank tax, and personal income tax.

## **Payment of Tax:**

### **1. Special Rules for 2009:**

The initial report and payment for employers not required to pay withholding through the PromptTax Program, is due by November 2, 2009. 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 due attributable to tax periods ending on or before September 30, 2009, provided that the employer has made the initial payment by November 2, 2009. The payment for the period October 1, 2009 through December 31, 2009 is due by February 1, 2010.

For employers, other than public school districts, that are required to make NYS withholding tax payments via the PromptTax Program, MCTMT payments should be made on the same dates as they make their regular withholding payments.

Self-employed individuals must estimate their MCTMT for the entire 2009 tax year and multiply such amount by ten-twelfths and again by 75% (to cover the period January 1, 2009 through September 30, 2009) and make such payment by November 2, 2009. The payment for the period October 1, 2009 through December 31, 2009 is due by February 1, 2010. This payment is calculated by using same formula that was used for the initial payment, however substitute 25% for the 75% previously used.

### **2. Rules for Subsequent Years:**

Other than for PromptTax filers, the MCTMT must be reported and paid for each calendar quarter by the last day of the month following the end of the quarters. For example, for quarters ending March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup>, payments would be due April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup> and January 31<sup>st</sup> of the following year.

Individuals, including partners in a partnership or members in an LLC treated as a partnership, who will owe any MCTMT for the tax year are required to make quarterly estimated tax payments on the same dates as employers listed above (however, see the rules below for group partnership filings). In addition, in order to avoid a penalty for underpayment of MCTMT, use the same rules that apply for

NYS personal income tax where timely payments are either: 1) at least 90% of the MCTMT due for the current year; or 2) 100% of the MCTMT reported for the prior year (110% if the individual's net earnings from self-employment allocated to the MCTD for the prior year is more than \$150,000). This prior year exception does not apply for tax year 2009.

**Key Definitions:**

**Employer:** Any employer required to deduct and withhold NYS 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 U.S.; the United Nations; or an interstate agency or public corporation created under an agreement or compact with another state or Canada.

**Public School District:** A New York public school district. A 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, the total wages and compensation defined in Internal Revenue Code 3121 without applying the annual cap on wages subject to Social Security and railroad retirement tax.

**Covered Employee:** An employee whose services are allocated to the MCTD.

**Allocation of Employee Services to the MCTD:** The new legislation provides for the application of the successive tests listed below to determine the amount of services allocated to the MCTD. If the application of a test results in the allocation of services to the MCTD, then no further test is applied. Otherwise, the next successive test is applied.

- 1) **Localization:** All of an employee's services are allocated to the MCTD if such employee's services are considered to be localized within the MCTD. 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 if the services performed outside the MCTD are incidental to the employee's services performed within the MCTD (temporary or transitory in nature, or consist of isolated transactions).
- 2) **Base of Operations:** If an employee's services are not localized within the MCTD, all services are allocated to the MCTD if the employee's base of operations is deemed to be conducted within the MCTD. However, this test can not be applied if the employee has either more than one base, or no base, of operations. For this purpose, 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 also where the employee customarily returns in order to receive instructions from their employer, or to replenish stock or material, to repair equipment used, or to perform any other function necessary in the exercise of their trade or profession.

- 3) **Place of Direction and Control:** If neither of the previous two tests result in a clear allocation of services, and direction and control emanates from only within the MCTD, then all services are allocated to the MCTD. Direction and control are defined as the place from which the employer directs and controls the activities of the employees. It is not required that the location be the employer's principal office, but rather the point from which job assignments are made and/or instructions are issued, or the place at which personnel records are maintained.
- 4) **Residence:** If none of the previous tests result 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 within the MCTD.

**Net Earnings from Self-Employment:** An individual's net earnings from self-employment defined under section 1402(a) of the Internal Revenue Code. This is the self-employment income subject to Social Security taxes before application of the statutory 92.35% and the annual cap on self-employment income used to calculate the federal self-employment tax.

**Net Earnings from Self-Employment Allocated to the MCTD:** An individual's net earnings from self-employment that are attributable to a business carried on within the MCTD.

**Business Activity carried on within the MCTD:** When an individual has, maintains, operates, or occupies desk space; or an office, shop, store, warehouse or factory; an agency; or other place located within the MCTD; or when their business matters are systematically and regularly carried on within the MCTD.

**Allocation of Net Earnings from Self-Employment:** If 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. An individual who has net self-employment earnings from activity within and outside of the MCTD must allocate such earnings for purposes of determining if the annual \$10,000 threshold is met and the amount of MCTMT due. For this purpose, net earnings are allocated using the same rules that business income is allocated under the NYS personal income tax rules. Under the personal income tax rules, business income is required to be allocated based on the books and records of the business if it fairly and equitably accounts for the portion of income attributable to NYS (and in this instance the MCTD). However, if the books and records are not kept in a manner that fairly

attributes business income to specific locations, then the three factor business apportionment formula must be applied. This formula uses sales, property and wages within a location to such amounts in all locations. For an illustration of this statutory formula, refer to Form Y-203 Yonkers Nonresident Earnings Tax Return, Schedule C, and replace the word Yonkers with MCTD in all instances.

**Annual MCTMT Reconciliation:**

An individual with net self-employment earnings must file a return to reconcile their actual MCTMT liability with any estimated payments made during the year. Any balance due must be paid with the filing of such reconciliation return and any overpayment can be refunded or applied to the following year. This return is due on or before the 30<sup>th</sup> day of the fourth month following the close of the taxable year (April 30<sup>th</sup> for calendar year taxpayers). An automatic extension of time will be available to file the reconciliation return. However, such extension does not extend the time to pay the tax which must be paid with the extension.

As of this date, NYS has not released the form that will be required to make the reconciliation filing.

**Partnership and Partners:**

Partners in partnerships (including LLC's treated as a partnership) that are doing business within the MCTD will be subject to the MCTMT if their share of the partnership's net earnings from self-employment allocated to the MCTD is more than \$10,000 for the tax year. 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 MCTMT due.

In order to determine the amount of net earnings from self-employment allocated to the MCTMT, a partnership would use the same allocation methods described above for self-employed individuals (books and records or three factor business apportionment percentage).

A partnership must also provide each partner their share of any addition or subtraction modification relating to any MCTMT expense or refund included in federal taxable income for the year.

**Group Returns for Partnerships:**

As an alternative to each partner making estimated MCTMT payments and filing separate reconciliation returns, a partnership meeting certain criterion may file one group reconciliation return and make estimated MCTMT payments on behalf of its partners who elect to be included in such group return. Further information regarding group returns will be made available by the NYS Department of Taxation and Finance when 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 NYS, except in the following circumstances:

1. Partners whose estimated MCTMT payments for the year will be \$300 or less.
2. Partners who elect to be included in a group return filed by the partnership.
3. For any partner who certifies to the partnership that they will comply individually with their estimated tax filing requirements.

Estimated MCTMT payments cannot be combined with any estimated NYS personal income taxes that the partnership may be required to make on behalf of its nonresident partners.

**Additional Information on Procedures for Reporting and Paying:**

ODMD will continue to keep its clients and contacts abreast of developments regarding the MCTMT. In addition, e-mail notifications containing links to newly posted MCTMT information is located on the NYS Tax Department's website; please visit [www.nystax.gov](http://www.nystax.gov) and register for the subscription service.

**Suggested Action Steps:**

We recommend that all employers that conduct business within the MCTD, especially those with employees that work at several locations, start the process of identifying "covered" employees well before the initial payment due date of November 2, 2009. ODMD tax advisors are available to assist with this classification process and can help employers and self-employed individuals calculate their expected MCTMT. In some instances, we may be able to provide planning ideas that will legally lower this tax burden.

Best regards,

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