



Legislative Amendments to the Metropolitan Commuter Transportation Mobility Tax

Chapter 56 of the Laws of 2011 amended sections 800 and 801 of the Tax Law with regard to the Metropolitan Commuter Transportation Mobility Tax. These amendments affect both self-employed individuals and employers.

Law and background

Chapter 56 of the Laws of 2011 amended sections 800 and 801 of Article 23 of the Tax Law relating to the Metropolitan Commuter Transportation Mobility Tax (MCTMT).

The MCTMT is imposed on certain employers and self-employed individuals (including partners in partnerships and members of limited liability companies (LLCs) that are treated as partnerships) engaging in business within the Metropolitan Commuter Transportation District (MCTD). For general information on the MCTMT, visit the department Web site (www.tax.ny.gov).

Self-employed individuals

Section 801(a) of the Tax Law that imposes the MCTMT on self-employed individuals has been amended. For tax years beginning on or after January 1, 2012, an individual will be subject to the MCTMT only if his or her net earnings from self-employment attributable to the MCTD exceed \$50,000 for the tax year. Prior to the amendment, an individual was subject to the MCTMT only if his or her net earnings from self-employment attributable to the MCTD exceeded \$10,000 for the tax year. The rate of the MCTMT for self-employed individuals (.34%) has not changed.

Employers

Definitions – Section 800(b) of the Tax Law that defines *employer* for purposes of the MCTMT has been amended. Effective for the calendar quarter beginning on April 1, 2012, the quarterly payroll expense threshold that an employer must exceed to make the employer liable for the MCTMT increased from \$2,500 in any calendar quarter to \$312,500 in any calendar quarter. In addition, employers that meet the definition of *eligible educational institutions* are no longer subject to the MCTMT.

For calendar quarters beginning on or after April 1, 2012, the definitions of *employer* and *eligible educational institution* under section 800(b) of the Tax Law are as follows:

- *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 \$312,500 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; an interstate agency or public corporation created under an agreement or compact with another state or Canada; or any *eligible educational institution*.
- An *eligible educational institution* means any public school district; a board of cooperative educational services; a public elementary or secondary school; a school approved pursuant to Article 85 or 89 of the Education Law to serve students with disabilities of school age; or a nonpublic elementary or secondary school that provides instruction in grade one or above.

Rate of tax – Effective for the calendar quarter beginning on April 1, 2012, section 801(a) of the Tax Law has been amended to add two new lower MCTMT rates for employers. The new rates will apply based on the amount of an employer’s payroll expense in a calendar quarter. Previously, the MCTMT was imposed at a single rate (.34%) for all employers.

For calendar quarters beginning on or after April 1, 2012, the MCTMT is imposed at the following rates:

If the payroll expense for the calendar quarter is:	The tax is:
Over \$312,500, but not over \$375,000	.11% of the payroll expense for that quarter
Over \$375,000 but not over \$437,500	.23% of the payroll expense for that quarter
Over \$437,500	.34% of the payroll expense for that quarter

Quarterly returns – For calendar quarters beginning before April 1, 2012 (including the quarter beginning on January 1, 2012), once an employer filed a quarterly MCTMT return, the employer was required to continue to file quarterly MCTMT returns for each subsequent quarter, even if no MCTMT was due, unless the employer permanently ceased paying wages subject to the MCTMT.

Effective for calendar quarters beginning on or after April 1, 2012, an employer who is not subject to the MCTMT for a quarter is not required to file a quarterly MCTMT return for that quarter. However, if an employer becomes subject to the MCTMT in a subsequent quarter, the employer must file a quarterly return and pay the tax due for that quarter. Additionally, employers who have made any MCTMT payments during the quarter or have a MCTMT overpayment that is carried over from a previous quarter must file a quarterly MCTMT return to request a refund or to request the overpayment be credited to the next quarter.

Employers may Web file their quarterly return through the department Web site or use Form MTA-305, *Employer’s Quarterly Metropolitan Commuter Transportation Mobility Tax Return*.

Employers participating in the PromptTax program

Employers who are required to participate in the PromptTax program for New York State withholding tax purposes, and employers who volunteer to participate in the PromptTax program for MCTMT purposes, are required to make their MCTMT payments on the same dates their withholding tax payments are due under the PromptTax program.

Because of the new quarterly payroll expense thresholds, certain PromptTax filers may not be able to determine at the beginning of a calendar quarter, whether they will be subject to the MCTMT for that quarter, or which MCTMT rate will apply. Accordingly, for calendar quarters beginning on or after April 1, 2012, the following Tax Department policy will apply for MCTMT PromptTax filers. Employers who follow this policy will not be subject to any penalties for underpayment of MCTMT PromptTax payments.

- Employers may use their previous quarter's payroll expense to determine if they expect to be subject to the MCTMT and if they must make MCTMT PromptTax payments in the current quarter. Therefore, employers whose payroll expense in the previous calendar quarter did not exceed \$312,500 are not required to make MCTMT PromptTax payments in the current quarter.

However, employers who did not make PromptTax payments during the current quarter because their previous quarter's payroll expense did not exceed \$312,500, and whose actual payroll expense for the current quarter exceeds \$312,500, must compute and pay the tax due with their quarterly return.

- Employers whose payroll expense exceeded \$312,500 in the previous quarter and who must make MCTMT PromptTax payments in the current quarter may use the MCTMT rate (see *Rate of tax* on page 2) that applied to their payroll expense for that previous quarter to compute the MCTMT PromptTax payments due. (For the second calendar quarter of 2012, employers may use the MCTMT rate that would have applied to their payroll expense for the first calendar quarter of 2012, as if the new rates were in effect.)

At the end of the calendar quarter, employers must compute their actual MCTMT liability using the rate that applies to their actual payroll expense for that quarter. Any unpaid tax must be remitted with the quarterly return. If a quarterly MCTMT return results in an overpayment made through PromptTax, the employer may request a refund or have the overpayment credited to the next quarter.

Example 1: *Company X is a PromptTax filer for MCTMT purposes. It hires large numbers of seasonal employees who will work in the MCTD during certain months of the calendar year. Therefore, Company X's payroll expense may vary each quarter. For the calendar quarter beginning on April 1, 2012, Company X determines it is not required to make MCTMT PromptTax payments because its payroll expense for the previous quarter was less than \$312,500.*

At the end of the quarter, Company X's actual quarterly payroll expense is \$362,500. To avoid penalties for underpayment of the MCTMT, Company X must compute its MCTMT liability using the .11% rate and pay the tax due with its quarterly MCTMT return that is due on or before July 31, 2012.

Example 2: *Company Z is a PromptTax filer for MCTMT purposes. Company Z's payroll expense for the first quarter of the year was \$425,000. Therefore, for the second calendar quarter, Company Z may use the .23% rate to compute the amount of its MCTMT PromptTax payments.*

At the end of the second quarter, Company Z's actual payroll expense is \$440,000. To avoid penalties for underpayment of the MCTMT, Company Z must compute its actual MCTMT liability using the .34% rate and pay the additional tax due with its quarterly MCTMT return that is due on or before July 31.

For additional information on the PromptTax program, visit the department Web site.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or 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.