

Computation of the MTA Surcharge for Corporations Engaged in the Business of Broadcasting

The following guidance concerns the computation of the MTA surcharge for corporations subject to tax under Article 9-A of the Tax Law that are engaged in the business of broadcasting (for example, broadcasters of television programs, radio programs, and films).

A corporation subject to tax under Article 9-A is subject to the MTA surcharge if it does business, employs capital, owns or leases property, or maintains an office in the Metropolitan Commuter Transportation District (MCTD). The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)) and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

To determine the amount of the MTA surcharge, a taxpayer must compute the MCTD allocation percentage. The MCTD allocation percentage is computed using a three-factor formula consisting of a single-weighted property factor, a single-weighted receipts factor, and a single-weighted payroll factor.

It is the Tax Department's position that when a broadcaster obtains a license to use a program or film for a certain number of times and/or over a limited period of time and the broadcaster receives the program or film in hard copy, the broadcaster has received the intangible right or license to use the program or film. Accordingly, the value of the program or film may not be included in the property factor of the MCTD allocation percentage since it is not considered to be tangible personal property. This new position applies to taxable years beginning on or after January 1, 2008.

Note: Programs or films obtained by a broadcaster in electronic form (for example, over a satellite or over the Internet) have always been considered an intangible right or license to use property and are not includable in the MCTD allocation percentage (or the allocation percentage applicable to entire net income for tax years beginning before 2008).

NOTE: A TSB-M is an informational statement 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.