

Computation of the Metropolitan Commuter Transportation Mobility Tax for Professional Employer Organizations

Chapter 59 of the Laws of 2012 amended section 801(a) of the Tax Law with regard to the computation of the Metropolitan Commuter Transportation Mobility Tax for professional employer organizations.

Law and background

Chapter 59 of the Laws of 2012 amended section 801(a) of the Tax Law relating to the Metropolitan Commuter Transportation Mobility Tax (MCTMT). This amendment provides professional employer organizations with a new method to compute the MCTMT for calendar quarters beginning on or after April 1, 2012.

A *professional employer organization* (PEO) as defined in section 916 of the Labor Law means any person whose business is entering into professional employer agreements with clients. Temporary help firms and employment agencies, as defined in Article 11 of the General Business Law, are not PEOs under the Labor Law.

A PEO is considered the employer of record of the employees of its clients and of its own organization. Therefore, the PEO is liable for the MCTMT due, if any, for each of its clients and for itself.

Computation of the MCTMT for PEOs

For calendar quarters beginning on or after April 1, 2012, MCTMT rates are based on the amount of an employer's payroll expense in a calendar quarter as follows:

If the payroll expense for the calendar quarter is:	The MCTMT rate is:
\$312,500 or less	0%
Over \$312,500, but not over \$375,000	.11%
Over \$375,000, but not over \$437,500	.23%
Over \$437,500	.34%

Under the new law, for calendar quarters beginning on or after April 1, 2012, a PEO will determine its MCTMT liability, if any, for a calendar quarter using the following method:

1. Determine a separate quarterly payroll expense for each client and for itself.

2. Multiply each payroll expense determined in step 1 by the applicable MCTMT rate for that expense amount.
3. Add together the MCTMT amounts computed in step 2 to determine the total MCTMT liability for the calendar quarter.

Employers participating in the Promptax program

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

Because of the new payroll expense thresholds and MCTMT rates in effect for calendar quarters beginning on or after April 1, 2012, certain Promptax filers may not be able to determine at the beginning of a calendar quarter if they will be subject to the MCTMT for that quarter, or which MCTMT rate will apply. Accordingly, the Tax Department has adopted a policy on determining MCTMT Promptax payments for calendar quarters beginning on or after April 1, 2012. This policy is stated in [TSB-M-12\(1\)MCTMT, Legislative Amendments to the Metropolitan Commuter Transportation Mobility Tax](#).

In applying this policy, a PEO will determine the amount of each MCTMT Promptax payment amount as follows:

1. Determine a separate payroll expense for each client and for itself for the period covered by the payment.
2. Multiply each payroll expense determined in step 1 by the MCTMT rate that would apply under the policy as if each client and the PEO itself were separate employers.
3. Add the MCTMT amounts computed in step 2 together to determine the MCTMT Promptax payment amount.

PEOs that follow this policy will not be subject to any penalties for underpayment of MCTMT Promptax payments.

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.