

MP&S TAX ALERT: NYS METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX DEEMED UNCONSTITUTIONAL

On August 22, 2012, in the case entitled *Mangano, et al. v. Silver, et al*, NYS Supreme Court, No. 14444/10, New York State (NYS) Supreme Court Justice Bruce Cozzens granted the plaintiffs' motion for summary judgment and held the Metropolitan Commuter Transportation Mobility Tax (MCTMT) to be unconstitutional under the NYS Constitution. The Justice said that the MCTMT did not serve a substantial state interest and the tax appropriated public funds for a local project.

Justice Cozzens, who serves in Nassau County, specifically ruled that since the law should have been passed with either a "home rule" message or by a "message of necessity", requiring a two-thirds vote in both the NYS Assembly and Senate, which did not occur, the law was unconstitutional.

The MCTMT went into effect on March 1, 2009 for employers and self-employed individuals engaging in business in the Metropolitan Commuter Transportation District (MCTD), which includes among others, Westchester, Nassau and Suffolk Counties and the five boroughs of New York City. These Counties, among others, are the plaintiffs in this case. For public school districts within the MCTD, the MCTMT became effective on September 1, 2009.

The rate of tax for employers is 0.34% of total payroll expense. For self-employed individuals, the rate is 0.34% of net earnings from self-employment allocated to the MCTD.

Although this ruling has been issued at the lowest level court in NYS, it is likely that it will be appealed by the defendants, the Governor, Assembly Speaker and Senate President, to the NYS Supreme Court, Appellate Division and then ultimately to the NYS Court of Appeals, since a State Constitutional issue is involved.

If you, as an employer, have been filing and paying the MCTMT since March 1, 2009, we recommend that you file a protective refund claim before the expiration of the three-year statute of limitations. As the MCTMT is paid by employers quarterly on form MTA-305 which is due the last day of the month following the quarter-ended, the statute has expired for MCTMT returns/payments made through the second quarter of 2009 (i.e., the quarter-ended June 30, 2009 for which a return was filed on or before by July 31, 2009).

For self-employed individuals that paid the MCTMT, the 2009 original return, form MTA-6, was due April 15, 2010 and the extended due date was October 15, 2010. As such, the three year statute of limitations for filing protective refund claims for the 2009 calendar year for such individuals is still open. For self-employed individuals that were included in the composite return filed by the partnership, LLC or LLP on form MTA-505, the amended composite return should be filed by such entity. A self-employed individual includes a partner in a partnership and a member of a limited liability company ("LLC"), treated as a partnership.

Our tax professionals can help you file a protective refund claim.

FOR MORE INFORMATION

If you have questions about the MCTMT or any state or local tax matter, please contact Steven P. Bryde by phone at 212.503.8806 or by email at sbryde@markspaneth.com.

ABOUT STEVEN P. BRYDE, JD

Tax Principal Steven P. Bryde, JD, is a recognized state and local tax (SALT) specialist with approximately 25 years of public accounting experience. He has worked in both global and regional public accounting firms. His broad background also includes over seven years of experience working in industry as a tax attorney for a global energy corporation.

Mr. Bryde uses his state and local tax expertise across the 50 states to benefit the firm's clients by developing tax-saving ideas as well as providing counsel on mergers and acquisitions, business-entity choice/formation and tax controversy representation. He also offers guidance on SALT planning for foreign inbound and US outbound clients.

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