



# Instructions for Form MTA-305

## Employer's Quarterly Metropolitan Commuter Transportation Mobility Tax Return

### General information

Beginning March 1, 2009, the metropolitan commuter transportation mobility tax (MCTMT) is imposed on certain employers engaging in business within the Metropolitan Commuter Transportation District (MCTD) (for public school districts within the MCTD it is imposed beginning September 1, 2009).

In addition, the MCTMT is imposed on individuals with self-employment income (see the instructions for Form MTA-6, *Metropolitan Commuter Transportation Mobility Tax Return*).

The metropolitan commuter transportation district (MCTD) consists of New York City (the counties of New York (Manhattan) Bronx, Kings (Brooklyn), Queens, and Richmond (Staten Island)) as well as the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

The MCTMT is imposed at a rate of .34% (.0034) of an employer's payroll expense for all covered employees for each calendar quarter. An employer may not deduct any amount of MCTMT from the wages or compensation of an employee.

**Web file** — Employers can electronically file their quarterly MCTMT returns and submit payments via ACH debit, through the Online Tax Center (at [www.nystax.gov](http://www.nystax.gov)). Benefits of this filing method include secure online filing as well as immediate data transmittal and confirmation.

### Who must file

Employers must file quarterly MCTMT returns if they are required to withhold New York State income tax from wages paid to employees and their payroll expense for all covered employees exceeds \$2,500 in any calendar quarter. However, the following employers are not subject to the MCTMT:

- any agency or instrumentality of the United States (as specifically stated by a federal law or a decision in a federal court case);
- the United Nations; or
- an interstate agency or public corporation created pursuant to an agreement or compact with another state or Canada.

Employers who are liable for MCTMT in one quarter must continue to file returns for subsequent quarters even if they don't have a liability for that quarter (unless they have ceased paying wages). If no MCTMT is due they must file a return showing no liability.

### When to file

Employers (PromptTax filers, see below) subject to the MCTMT must file and pay by the last day of the month following the end of the calendar quarter as follows:

Quarter	Due date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

When the due date falls on a Saturday, Sunday or legal holiday, the employer may file on the next business day. There are no extensions of time allowed for employers to file MCTMT returns.

**Note:** The initial MCTMT return and payment is due November 2, 2009 (since October 31, 2009, is a Saturday). See *Initial return and payment* on page 2 of these instructions.

**Employers participating in the PromptTax program** — Employers, other than public school districts, who are required to remit withholding taxes through the Tax Department's PromptTax program are required to pay MCTMT on the same date their withholding tax payments are made. Employers who voluntarily remit withholding taxes through the Tax Department's PromptTax program may also volunteer to remit MCTMT on the same date their withholding tax payments are made. Visit our Web site at [www.nystax.gov](http://www.nystax.gov) for information on the PromptTax program and requirements for PromptTax filers including filing and payment due dates.

### Amending Form MTA-305 information

To amend a previously filed Form MTA-305 for the same period, an employer must complete a new Form MTA-305 and mark an **X** in the *Amended return* box on the front of the form. The employer must complete the entire return, correct the appropriate lines with the new information, and recompute their MCTMT liability.

**Federal audit changes** — If the Internal Revenue Service (IRS) makes a change to an amount the employer must include in the payroll expense subject to MCTMT, the employer must report this change to the New York State Tax Department within 90 days after the final determination of the change by filing an amended Form MTA-305.

### Penalties and interest

MCTMT quarterly returns filed and tax paid after the due date are subject to penalties and interest. These penalties may include the: late filing penalty, late payment penalty, failure to file penalty, and others.

Interest will be charged on any MCTMT that is not remitted on or before the payment due date.

### Completing Form MTA-305

This return is designed to be read by information processing equipment. To assist, please be sure to send us original forms (not photocopies). Boxes are printed on the forms to guide your entries and to promote accuracy. When entering information, please print with a black pen or type in the box or space the number (0-9) or letter (A-Z). Do not enter dollar signs, commas, decimal points, or any other punctuation or symbols (minus signs, parentheses, etc.). Write the number(s) like this:



Be careful not to touch any box line. Leave blank any box or space that does not apply to you.

### Specific instructions for employers

To calculate your MCTMT, you must determine your payroll expense for the period for all covered employees.

## Determining if an employee is a covered employee

A covered employee means an employee (including a statutory employee) whose services are allocated to the MCTD.

To determine if an employee's services are allocated to the MCTD, apply the following tests in the order presented below. If any test results in the allocation of an employee's services to the MCTD, the employee is a covered employee and no further test need be applied. Otherwise proceed to the next succeeding test.

- 1) **Localization test** — An employee's services are allocated to the MCTD if those services are: 1) performed entirely within the MCTD or 2) performed both inside and outside of the MCTD, but the services performed outside the MCTD are incidental to the employee's services performed within the MCTD (for example, the services are temporary or transitory in nature, or consist of isolated transactions).
- 2) **Base of operations test** — An employee's services are allocated to the MCTD if the employee's base of operations is in the MCTD. This test cannot be applied if the employee has no base of operations, or has more than one base of operations. *Base of operations* means the place where the employee is not continuously located, but from which the employee customarily starts out to perform his or her functions within or outside the MCTD. The *base of operations* is where the employee customarily returns in order to receive instructions from his or her employer, communications from other persons, or to replenish stock and materials, repair equipment used, or to perform any other function necessary in the exercise of his or her trade or profession.
- 3) **Place of direction and control test** — An employee's services are allocated to the MCTD if the employee's direction and control emanates only from within the MCTD and the employee performs some services within the MCTD. *Direction and control* means the place from which the employer directs and controls the activities of the employees. It is not necessarily the location of the principal office, but rather the point from which basic authority over the supervision of services emanates (for example, the place where job assignments are made and/or instructions are issued, or the place where personnel and payroll records are maintained).
- 4) **Residence test** — If none of the preceding tests results 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 in the MCTD. If the employee either doesn't reside in the MCTD or resides there, but performs no services in the MCTD, the employee is not a covered employee.

**Example:** *Employee A works as a corporate trainer for XYZ Corporation. Employee A maintains an office at XYZ Corporation's Manhattan office where he receives his training schedule, agenda updates, and training materials. However, Employee A spends approximately three weeks out of each month on training assignments at XYZ Corporation branches outside of the MCTD. Is he considered a covered employee?*

**Yes.** *In applying the first test, we cannot conclude that Employee A's services are localized to the MCTD because the services performed outside of the MCTD would not be considered incidental to Employee A's services within the MCTD. Employee A's primary service is providing training to employees of XYZ Corporation and these*

*services are done outside of the MCTD. We then apply the next test by determining the location of Employee A's base of operations. Since Employee A customarily returns to the Manhattan branch of XYZ Corporation to receive his training schedule, training materials, and corporate information, we can conclude that the Manhattan branch is Employee A's base of operations. All of Employee A's services are allocated to the MCTD and he is a covered employee of XYZ Corporation.*

## Payroll expense subject to the MCTMT

Once you have identified the covered employees, you must determine the payroll expense for each covered employee for the reporting period.

*Payroll expense* for covered employees subject to federal social security taxes means the total wages and compensation as defined in section 3121 of the Internal Revenue Code (IRC), without regard to section 3121(a)(1). Section 3121 of the IRC defines wages and compensation subject to federal social security taxes. However, in computing the payroll expense, the annual cap on the amount of wages and compensation of a covered employee subject to social security tax contained in section 3121(a)(1) of the IRC does not apply.

*Payroll expense* for covered employees subject to federal railroad retirement tax means the total wages and compensation as defined in section 3231 of the IRC, without regard to section 3231(e)(2)(A)(i). Section 3231 of the IRC defines wages and compensation subject to federal railroad retirement tax. However, in computing payroll expense, the annual cap on the amount of wages and compensation of a covered employee subject to the railroad retirement tax contained in section 3231(e)(2)(A)(i) of the IRC does not apply.

You cannot allocate payroll expenses for covered employees who work both inside and outside of the MCTD for the purposes of computing the MCTMT. If an employee is considered a covered employee, then all of the payroll expense for that employee is subject to the MCTMT.

## Initial return and payment

For the initial return, employers subject to the MCTMT (other than public school districts in the MCTD and employers that are required or who choose to pay the MCTMT through the PrompTax program) must file and pay any amount of MCTMT due for the period March 1, 2009, through September 30, 2009, on or before November 2, 2009 (for public school districts in the MCTD, the initial return and payment must cover the period September 1, 2009, through September 30, 2009). Employers that are required or who choose to file New York State income tax withholding through the Tax Department's PrompTax program should refer to the Tax Department's Web site at [www.nystax.gov](http://www.nystax.gov) for information on initial filing and payment requirements.

For tax year 2009, you must apply the \$2,500 limitation to your payroll expense for all covered employees for each quarter to determine if you are liable for the tax in that quarter even though your MCTMT initial filing period may include less than a full calendar quarter. If your initial filing period includes more than one calendar quarter, your initial return should include the total payroll expense from all quarters in the period when your payroll expense exceeded \$2,500.

**Example:** Employer A is not a PromptTax filer and not a public school district in the MCTD. Employer A has determined the following payroll expense for all covered employees for 2009:

Period	Payroll expense
Jan 1 - Jan 31	\$1,000
Feb 1 - Feb 28	\$1,000
Mar 1 - Mar 31	\$1,200
April 1 - April 30	\$2,500
May 1 - May 31	\$3,000
June 1 - June 30	\$4,500
July 1 - July 31	\$4,500
Aug 1 - Aug 31	\$2,000
Sept 1 - Sept 30	\$2,500

Employer A's initial MCTMT return must cover the period from March 1, 2009, to September 30, 2009. Even though the MCTMT liability is computed on payroll expense beginning March 1, 2009, Employer A must apply the \$2,500 limitation to each complete calendar quarter. Based on the payroll expenses reported, Employer A would be subject to the MCTMT for all three quarters and would be reporting total payroll expense of \$20,200 (March 1 – Sept 30) on their initial return.

To complete your initial return if you are subject to the MCTMT (and are not a PromptTax filer), you should prepare **one** Form MTA-305 reporting the payroll expense for all covered employees for the appropriate filing period (explained above) and mark an **X** in the *July 1 - Sep 30* box. **Do not** file multiple MTA-305 forms for the initial filing period.

### Line instructions

Enter your legal name, business mailing address including ZIP code, and your employer identification number (EIN). Your business mailing address is where all of your withholding tax, unemployment insurance (if applicable), and MCTMT mail will be sent.

**Foreign addresses** — Enter the information in the following order: city, province or state, and then country (all in the *City, village, or post office* box). Follow the country's practice for entering the postal code. Do not abbreviate the country name.

**Address change** — If you need to update your withholding tax, unemployment insurance (if applicable), and MCTMT address, you can do so online. Visit our Web site at [www.nystax.gov](http://www.nystax.gov) and select the option to change your address. Otherwise, enter your new mailing address for withholding tax, unemployment insurance (if applicable), and MCTMT in the appropriate area on Form MTA-305, and mark an **X** in the *Address change* box on the address line. **Do not** mark an **X** in this box if your address is new since your last filing but was already updated online or if you completed Part E, *Change of business information*, on Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*.

If there have been changes to other business information (for example, business name, identification number, telephone number, etc.), you must complete and submit Form DTF-95, *Business Tax Account Update*. To report a change to your physical or paid preparer address only, you may file Form DTF-96, *Report of Address Change for Business Tax Accounts*.

**Filing period** — Mark an **X** in the box for the quarter and enter the last two digits of the tax year of the period for which you are filing. For your initial return and payment due November 2, 2009, mark the *July 1 - Sep 30* box.

**Amended return** — If you are filing an amended return, mark an **X** in the *Amended return* box on the front of the return. Complete the return using the corrected information.

**Final payroll date** — If you have permanently ceased paying wages, enter the date of the final payroll in the boxes where indicated on the back of the return. Do not enter a date if you are temporarily not paying wages.

**Line 1** — Enter the total payroll expense for all covered employees for the period. Do not leave line 1 blank. If this amount is not greater than \$2,500 for the quarter, you are not subject to the MCTMT for the quarter. Enter **0** on line 2 and continue on line 3.

**Note:** The initial return must include the payroll expense for each covered employee for the period from March 1, 2009, through September 30, 2009. The initial return for public school districts in the MCTD must include the payroll expense for all covered employees for the period from September 1, 2009, through September 30, 2009.

**Line 3** — Enter the total of:

- any MCTMT overpayment from the previous quarter that you requested be applied to the period (if this amount was adjusted by the Tax Department, use the adjusted amount); and
- any MCTMT payments remitted through the Tax Department's PromptTax program for payrolls during the period.

**Amended return filers** — Make the following adjustments to the amount reported on line 3 of the previously filed MTA-305 you are amending:

- Add any amount paid with your original return as reported on your original Form MTA-305, line 4. If you paid additional amounts since your original return was filed, also include these payments on line 3. If you did not pay the entire amount due shown on your original return, enter the actual amount that was paid. **Do not include payments of interest or penalties.**
- Subtract any overpayment shown on line 5 of your original Form MTA-305. If the overpayment claimed on your original return was previously adjusted by the Tax Department, subtract the adjusted overpayment amount. **Do not include interest you received on any refund.**

**Line 4** — If line 2 is more than line 3, subtract line 3 from line 2; this is the total MCTMT amount due for the period. Make your check or money order payable in U.S. funds to **Commissioner of Taxation and Finance** for the total payment due. Write your EIN and **MTA-305** on your payment.

**Fee for payments returned by banks** — A new law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department won't charge the fee. If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

**Line 6** — To request a refund of the amount on line 5, mark an **X** in box 6a. To request a credit to next quarter's MCTMT, mark an **X** in box 6b.

The department will keep all or part of any overpayment (refund) you report on line 5 if you have outstanding liabilities.

### Third-party designee

Do you want to authorize another person (third-party designee) to discuss this tax return with the New York State Tax Department?



If **No**, mark an **X** in the No box.

If **Yes**, mark an **X** in the Yes box. Print the designee's name, phone number, and any five numbers the designee chooses as his or her personal identification number (PIN). If you want to authorize the paid preparer who signed this return to discuss it with the Tax Department, print the preparer's name and phone number in the spaces for the designee's name and phone number (you do not have to provide a PIN).

If you mark the Yes box, you are authorizing the Tax Department to discuss with the designee any questions that arise during the processing of this return. You are also authorizing the designee to:

- give the Tax Department any information that is missing from this return;
- call the Tax Department for information about the processing of this return or the status of the refund or payment(s); **and**
- respond to certain Tax Department notices that you share with the designee about math errors, offsets, and return preparation. We will not send notices to the designee.

You are not authorizing the designee to bind you to anything (including any additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file Form POA-1, *Power of Attorney*. Copies of statutory tax notices or documents (such as a *Notice of Deficiency*) will only be sent to your designee if you file Form POA-1.

The third-party designee authorization cannot be revoked. However, the authorization only includes the tax period covered on this return. You may designate the same representative, or another representative, on future returns.

### Signature

You must sign the return and print your name, title, date, and telephone number. The taxpayer signature area must be completed by: the individual if the employer is an individual owner; the president, treasurer, or other principal officer if the employer is a corporation; a responsible and duly authorized member having knowledge of a firm's affairs if the employer is a partnership or other unincorporated organization; or a responsible and duly authorized governmental official, where appropriate. The signature certifies that the information contained in this return is true and correct.

If you use a payroll service or a paid preparer, the paid preparer section must be completed by the payroll service or preparer.

**Paid preparer's responsibilities** — Under the law, all paid preparers must sign and complete the paid preparer section of the return. Paid preparers may be subject to civil and/or criminal sanctions if they fail to complete this section in full.

When completing this section, you must enter your federal preparer tax identification number (PTIN) if you have one; if not, you must enter your social security number. If you are a payroll service company you must also enter the name and EIN of the company.

**Keep a copy of your completed and signed return for your records.**

### Mail your return to:

MCTMT PROCESSING CENTER  
PO BOX 4139  
BINGHAMTON NY 13902-4139

**Private delivery services** — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed or paid your tax, you cannot use the date recorded by a private delivery service unless you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* below for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery. If you use any private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: JPMorgan Chase, MCTMT Processing Center – 305, 33 Lewis Road, Binghamton NY 13905-1040.

**Privacy notification** — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

**MCT Mobility Tax Information Center:** (518) 485-2392

For in-state callers without free long distance: 1 866 579-2498

To order MCTMT forms: (518) 485-2392

For in-state callers without free long distance: 1 866 579-2498

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.