TSB-A-16(6)I Income Tax August 29, 2016

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C151130B

The Department of Taxation and Finance received a Petition for Advisory Opinion from

("Petitioner"). Petitioner asks whether the Metropolitan Commuter Transportation Mobility Tax will be imposed on Petitioner, as an employer, for that part of its payroll expense attributable to wages paid to federal work-study students in its employ.

We conclude that imposition of the Metropolitan Commuter Transportation Mobility Tax on Petitioner will not include imposition of the tax for that part of its payroll expense attributable to wages paid to federal work-study students in Petitioner's employ.

Facts

Petitioner maintains an office and transacts business within New York, and pays wages that are taxable under the Tax Law and, therefore, withholds tax from such wages. Petitioner has a payroll expense in excess of \$312,500 per calendar quarter.

Petitioner engages in business in the city of New York. Petitioner's employees include federal work-study students employed in the city of New York.

Analysis

The Metropolitan Commuter Transportation Mobility Tax (the "MCTMT") is imposed on employers who engage in business within the Metropolitan Commuter Transportation District (the "MCTD"), under Article 23 of the Tax Law, based on their payroll expense related to employees within the MCTD. *See* Tax Law § 801. The MCTD includes the city of New York. *See* Tax Law § 800(a) and Public Authorities Law § 1262.

Under the facts of this Advisory Opinion, Petitioner is an employer who engages in business within the MCTD. Therefore, Petitioner meets the definition of "employer" for purposes of Article 23. *See* Tax Law § 800(b). Likewise, the work-study students in its employ are employed within the MCTD and so are "covered employees." *See* Tax Law § 800(d) and 801(c). These conclusions of law are assumed by Petitioner in its request for an advisory opinion.

Since the work-study students whose wages are the subject of Petitioner's request are employed in the city of New York, i.e., within the MCTD, and since Petitioner otherwise falls within the provisions of Article 23 of the Tax Law, the only issue to be decided in this Advisory Opinion is whether the part of an employer's payroll expense, if any, attributable to wages paid to federal work-study students should be excluded from imposition of the MCTMT.

For purposes of imposition of the MCTMT under Article 23, an employer's "payroll expense" is comprised of "wages and compensation" as such terms are defined in IRC §§ 3121 and 3231. *See* Tax Law § 800(c). IRC § 3121 defines "wages" as "mean[ing] all remuneration for employment." *See* 26 U.S.C.A. § 3121(a).

The federal Work-Study Program subsidizes the part-time employment of undergraduate, graduate and professional students who are in need of such employment in order to pursue courses of study at eligible institutions of higher learning. *See* 42 U.S.C.A. §§ 2751-2756b. The definition of "employment" in IRC § 3121 specifically excludes from employment services performed by a student in the employ of a college or university if the student is enrolled and regularly attending classes at such college or university. *See* 26 U.S.C.A. § 3121(b)(10). This would include students employed in the federal Work-Study Program. Therefore, since the MCTMT statute makes explicit reference to the definitions in IRC § 3121 for purposes of determining an employer's payroll expense, and thereby imposition of the tax, as described above, the MCTMT should not be imposed on the wages paid to work-study students.¹

Based on the foregoing, we conclude that Petitioner will not be subject to the MCTMT for that part of its payroll expense attributable to wages paid to federal work-study students in Petitioner's employ.

DATED: August 29, 2016

/S/ DEBORAH R. LIEBMAN Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

¹ Article 23 of the Tax Law includes an exemption from the MCTMT for an employer's payroll expense in a "tax free NY area" as defined in Article 21 of the Economic Development Law, the START-UP NY program. *See* Tax Law § 803(b) and Economic Development Law §§ 431.7 and 435. With the exception of the START-UP NY program, "any exemption from tax specified in any other New York state law will not apply" to the MCTMT. *See* Tax Law § 803(a). However, this "exemption override" does not preempt the exclusion of work-study wages from an employer's payroll expense, as discussed in this Advisory Opinion, for purposes of imposition of the MCTMT under Article 23.