

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-93 (3) I
Income Tax
April 28, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I930210A

On February 10, 1993, a Petition for Advisory Opinion was received from Metro-North Commuter Railroad Co., 347 Madison Avenue, New York, New York 10017.

The issue raised by Petitioner, Metro-North Commuter Railroad Co., is how the application of the Amtrak Reauthorization and Improvement Act of 1990 (hereinafter the "Act") affects employees traveling to more than one state during the course of their employment, specifically the meaning of the term "regularly assigned" and the types of occupations and work schedules covered by the Act.

Petitioner operates commuter train service within New York State and the State of Connecticut. Petitioner employs a number of employees who perform work in both states, some of whom perform this work on trains and some of whom perform this work in offices or along Petitioner's right-of-way.

Federal Public Law 101-322, the Act, amended various provisions of Title 49 of the United States Code relating to state and local taxation of compensation paid to employees of interstate rail carriers, interstate motor carriers and interstate motor private carriers and applies to compensation paid on or after July 6, 1990.

Section seven of the Act amends section 11504(a) of Title 49 of the United States Code with regard to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of Chapter 105 of such Title 49 and states, in pertinent part, that:

No part of the compensation paid by a rail carrier ... to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the state or subdivision thereof of the employee's residence....
(emphasis added)

Petitioner requests an opinion as to whether the following four categories of employees are covered by section seven of the Act:

- A. Jobs which involve duties which cover the entire Metro-North system (New York and Connecticut), which require the incumbent to perform duties in both states within a given week, although not on a fixed daily schedule. For example, a Crew Foreman position does not follow a fixed daily schedule of appearances at each crew base (i.e. every Tuesday in New Haven), but the incumbent regularly works at both Connecticut and New York locations from day to day during each week so that during a given week he/she will spend some time in both Connecticut and New York.

- B. Jobs which report to a headquarter location in one state and are responsible for performing duties on a specified portion of the railroad line encompassing portions of both New York and Connecticut. Although such employees do no work in both states on a fixed daily schedule, they will spend time in both states during the year. For example, a track gang or signal maintainer position whose assigned portion of the railroad line is from a point in New York to a point in Connecticut.
- C. Jobs which report to a headquarters in one state, but are reresponsible for specific duties throughout the entire Metro-North system in both states. For example, an auditor who, on an annual basis will perform audits and/or auditing oversight in both states, although when in that year those audits or oversight will be performed is not fixed.
- D. Jobs which are responsible for performing duties for a territory encompassing areas in two states or the entire Metro-North system which travel within states on an as-needed basis. For example, a Police Detective responsible for investigations in two states whose presence in either state is determined by when the need for investigations arises.

If an employee of Petitioner is not a resident of New York State for personal income tax purposes under section 605(b)(1) of the Tax Law, and such employee is paid compensation for regularly assigned duties performed in New York State and one or more other states in accordance with the act, the compensation paid on or after July 6, 1990 does not constitute income derived from New York State sources and is not subject to New York State income tax, even though the employee performed services in New York State.

When applying the provisions of the Act for New York State income tax purposes, such an employee is considered to be performing "regularly assigned" duties in more than one state if such employee's job description requires the employee to perform services in at least two states on a systematic basis regardless of the percentage of time spent at each location. If an employee has no standard route and is assigned duties in more than one state on a random basis, that employee would not be considered to be performing "regularly assigned" duties in more than one state.

Accordingly, with respect to categories A and B above, the New York nonresident employees who are regularly assigned to perform duties in both New York State and Connecticut will meet the requirements of section seven of the Act exempting such employees from New York State income tax. Therefore, the compensation paid on or after July 6, 1990 for the performance of such duties by such New York nonresident employees will not be subject to New York State income tax. Further, such compensation paid on or after July 6, 1990 is not subject to New York State withholding requirements.

With respect to New York nonresident employees referred to in categories C and D above, who are assigned duties on a random basis, even if duties are performed in both New York State and Connecticut, such employees do not meet the

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requirements of section seven of the Act exempting such employees from New York State income tax. The compensation paid to such an employee on and after July 6, 1990 for duties performed in New York State constitutes income from New York sources pursuant to section 631(b) of the Tax Law. Such compensation is subject to New York State income tax and New York withholding requirements.

The determination of whether an employee is "regularly assigned" duties to be performed in New York State and one or more other states is a factual matter not susceptible of determination in an advisory opinion. An advisory opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts" Tax Law, §171. Twenty-fourth; 20 NYCRR 2376.1(a).

It should be noted, that New York nonresident employees who receive compensation subject to New York State income tax are required to file Form IT-203, Nonresident and Part-Year Resident Income Tax Return, and report to New York any items of income derived from or connected with New York sources. If tax is not required to be withheld, estimated tax is required to be paid.

DATED: April 28, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.