

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(1)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
July 20, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M091116A

On November 16, 2009, a Petition for Advisory Opinion was received from [REDACTED] (Petitioner).

The petition asks whether Petitioner's member benefits are subject to the New York State metropolitan commuter transportation mobility tax (MCTMT) and whether Petitioner is required to pay the MCTMT on those benefits.

We conclude that, while the benefits are wages subject to the MCTMT, Petitioner has no legal obligation under the Tax Law to pay MCTMT on plan benefits on behalf of its members.

Facts

Petitioner operates a union health and welfare benefit plan. The Plan provides health and welfare benefits for its covered union members and retirees. The Plan's benefits are funded through contributions from the City of New York and various other quasi-public employers and authorities. The contributions are negotiated by the union and employers as part of the total compensation/benefit package that the Plan's members/retirees receive pursuant to those collective bargaining agreements. Pursuant to such agreements, the Plan receives a set annual per capita contribution from various employers to fund the health and welfare benefits it provides. All of the negotiated contributions noted above are used by the Plan to provide agreed upon health and welfare benefits for its members/retirees.

At the end of each year, the Plan provides the employer of the plan members, the City of New York, through its Office of Payroll Administration (OPA), all information it needs to issue the required W-2's for its employees who have received payments from the Plan. Petitioner has agreed in the past to pay Social Security and Medicare taxes due on the short term disability payments and on the value of legal services for its active and retired members. The OPA has asserted that Petitioner's payment of short-term disability and legal services plan benefits to its participants requires Petitioner to reimburse the OPA for MCTMT on the portion of benefits considered wages.

Analysis

Chapter 25 of the Laws of 2009 added Article 23 to the Tax Law which establishes the metropolitan commuter transportation mobility tax (MCTMT). The MCTMT is imposed on certain employers and self-employed individuals engaging in business within the Metropolitan Commuter Transportation District. The *Metropolitan Commuter Transportation District (MCTD)* is defined under section 1262 of the Public Authorities Law. It includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, and Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

The MCTMT is imposed on the payroll expense of employers who engage in business within the MCTD.

Payroll expense means wages and compensation as defined in section 3121 of the Internal Revenue Code. Section 3121 defines wages and compensation subject to federal social security taxes. The fact that the Plan reimburses OPA for the Social Security taxes due on the short-term disability payments and the value of legal services for its members demonstrates that these amounts constitute wages and compensation subject to the MCTMT.

An employer for purposes of the MCTMT means any employer required by section 671 of the Tax Law to deduct and withhold New York State income tax from wages paid to employees that has a payroll expense in excess of \$2,500 in any calendar quarter. However, the following employers are not subject to the MCTMT: an agency or instrumentality of the United States, the United Nations, or an interstate agency or public corporation created under an agreement or compact with another state or Canada. We conclude that, since Petitioner is not the employer of its plan participants, it has no legal obligation under the Tax Law to pay MCTMT on plan benefits on behalf of its plan members.

DATED: July 20, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.