

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

TSB-A-10(2)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
October 28, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M091211A

On December 11, 2009, the Department of Taxation and Finance received a Petition from James M. Labaugh Antiques (“Petitioner”). Petitioner asks whether its partners’ business activities in the Metropolitan Commuter Transportation Department (MCTD) are subject to the New York State Metropolitan Commuter Transportation Mobility Tax (MCTMT). We conclude that Petitioner’s partners have an obligation to pay MCTMT as a result of their partnership business activity in the MCTD, but the partners may exclude business activity outside of the MCTD.

Facts

The Petitioner conducts its business as a New York partnership. The Petitioner sells antique merchandise at various antique shows throughout the country. The partnership has two partners, but has no employees or office space.

The partners store the merchandise in their home located in the Metropolitan Commuter Transportation District. The partners do not sell merchandise out of their home. The direction and control of Petitioner’s business activities take place in the MCTD, and the books and records of the business are located in the MCTD. They travel to eight or more antique shows located throughout the country. At each show, they rent space and showcases, pay for electricity, etc. The partners may or may not sell merchandise at a particular show. In any particular year, the partners may or may not attend a show located in New York State. The partnership’s business records show income earned at each location.

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 MCTD. The MCTD is defined under section 1262 of the Public Authorities Law and 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 Petitioner’s partners would be subject to the MCTMT as self-employed individuals. If the partnership had employees, the partnership may also owe MCTMT on the payroll expense of its employees.

Individuals (including partners in partnerships, and partners and members of LLPs and LLCs that are treated as partnerships for federal income tax purposes) who have net earnings from self-employment allocated to the MCTD are subject to the MCTMT. However, if the total net earnings from self-employment allocated to the MCTD are \$10,000 or less for the tax year, no MCTMT is due. Tax Law §801(a).

If the net earnings from self-employment allocated to the MCTD are from more than one business or partnership, a taxpayer must use the total of all net earnings from self-employment allocated to the MCTD for purposes of the \$10,000 threshold and to compute the tax. Additionally, the threshold and the tax must be computed on an individual basis, even though a joint personal income tax return may be filed.

Net earnings from self-employment means an individual's net earnings from self-employment as defined under section 1402(a) of the Internal Revenue Code (IRC). Tax Law §800(e). An individual's distributive share of income or loss from a trade or business carried on by a partnership is included in net earnings from self-employment under IRC §1402(a). IRC § 1402(b)(1) defines self-employment income subject to social security taxes. However, in computing the amount of net earnings from self-employment subject to the MCTMT, IRC § 1402(b), including the annual limitation on the amount of net earnings from self-employment subject to social security tax under IRC § 1402(b)(1), does not apply.

Net earnings from self-employment allocated to the MCTD means an individual's net earnings from self-employment that are attributable to a business carried on within the MCTD. *Business activity* is carried on in the MCTD if an individual has, maintains, operates, or occupies desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place located in the MCTD where his or her business matters are systematically and regularly carried on. Similarly, business activity is carried on outside of the MCTD if the individual has, maintains, operates, or occupies desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place located outside the MCTD where his or her business matters are systematically and regularly carried on.

The Petitioner maintains inventory in its partners' home, located in the MCTD. Further, the direction and control of Petitioner's business activities take place in the MCTD, and the books and records of the business are located in the MCTD. Therefore, Petitioner is carrying on business activity in the MCTD.

If all the business activity is carried on within the MCTD, all net earnings from self-employment are allocated to the MCTD. If business activities are carried on both in and outside of the MCTD, only a portion of the net earnings from self-employment are allocated to the MCTD. In this case, when the Petitioner participates in an antiques show at a location outside the MCTD, the Petitioner will be carrying on business activity both in and outside the MCTD.

If an individual has net earnings from self-employment from activity both in and outside of the MCTD, those net earnings must be allocated for purposes of (1) determining whether or not the \$10,000 annual threshold has been met, and (2) computing the amount of MCTMT due. Allocation

is done using the same rules that apply for purposes of the allocation of business income earned in and out of New York State under the personal income tax rules. Tax Law §801(b)(1).

Accordingly, if the business keeps books and records that fairly and equitably show net earnings from self-employment from business activity in the MCTD, the part to be allocated to the MCTD may be computed from those books and records. If the books and records do not fairly and equitably show the net earnings from self-employment in the MCTD, the business must allocate to the MCTD using the formula method (business allocation percentage) or another method that has been authorized by the New York State Commissioner of Taxation and Finance.

The amount to be allocated to the MCTD using the formula method is that part of total net earnings from self-employment that results from multiplying total net earnings by the average of a property percentage, a payroll percentage, and a gross income percentage. For more information, see the *Business allocation percentage* worksheet in the instructions for Form MTA-6, *Metropolitan Commuter Transportation Mobility Tax Return For Self-Employed Individuals (including partners)*.

For additional information regarding the MCTMT, see Publication 420, *Guide to the Metropolitan Commuter Transportation Mobility Tax*.

DATED: October 28, 2010

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DANIEL SMIRLOCK
Deputy Commissioner and 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.