

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

TSB-A-13(1)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
April 11, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M120508A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a not-for-profit corporation, which operates a school licensed under Article 89 of the Education Law, and which also provides other services to individuals with developmental disabilities, is exempt from the Metropolitan Commuter Transportation Mobility Tax (MCTMT) pursuant to the “eligible educational institution” exception. We conclude that divisions of Petitioner are exempt from the MCTMT only with regard to the employees of the eligible educational institutions operated by those divisions.

Facts

Petitioner is a not-for-profit corporation with operating divisions called “chapters” throughout the State of New York, including New York City and the following counties: Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, New York, and Westchester, all of which are part of the Metropolitan Commuter Transportation District (MCTD). The chapters of Petitioner serve several functions, which include the operation of preschools licensed under Article 89, Section 4410 of New York Education Law and school-age programs licensed under Article 89, Section 4401 of New York Education Law. The following chapters in the MCTD operate schools licensed under Article 89 of the Education Law for school age children: Suffolk, New York City, Rockland and Orange. Each chapter school has teachers, teacher aids, therapy staff, a principal and other program administrators that are all direct-charged to the school in the chapter’s Consolidated Fiscal Report filed with New York State. Petitioner estimates that in 2011 education wages as a percentage of total wages for the chapters operating schools ranged from less than 10% to almost 32%. Each chapter that operates a school holds only one Employer Identification Number. Each chapter files its own MCTMT return.

Analysis

Section 801 of the Tax Law imposes a tax on employers who engage in business within the Metropolitan Commuter Transportation District, based on the payroll expense of all of their covered employees. Covered employees are those employees employed within the MCTD. Tax Law §800(d)

Effective for the calendar quarter beginning on April 1, 2012, employers that meet the definition of “eligible educational institutions” are no longer subject to the MCTMT. Tax Law section 800(b)(4) defines an “eligible educational institution” as any public school district, a board of cooperative educational services, a public elementary or secondary school, a school

approved pursuant to article eighty-five or eighty-nine of the education law to serve students with disabilities of school age, or a nonpublic elementary or secondary school that provides instruction in grade one or above.

Article 89 of the Education Law provides for a variety of special education services and programs for children from age birth to twenty-one with special needs. However, section 800 of the Tax Law specifies that an eligible Article 89 educational institution for the purposes of the MCTMT is a school approved to serve students with disabilities of school age. Tax Law §800(b)(4).

Each chapter in the MCTD is an employer engaged in business in MCTD subject to the MCTMT. The chapters that operate schools that qualify as eligible educational institutions also have other operations. In fact, based on the Consolidated Fiscal Report statistics, the payroll associated with the school is only a minority percentage of the total payroll of each chapter. Consequently, the entire chapter is not excluded from the definition of employer for the MCTMT; only the portion of the chapter's operations as an eligible educational institution will be excluded. Therefore, within a chapter that operates a school, none of the employees of that school will be covered employees for purposes of the MCTMT. However, the remaining employees of the chapter are covered employees and their wages are included in the calculation of the chapter's payroll expense subject to the MCTMT. Any chapter within the MCTD that does not operate an eligible educational institution as described above is liable for MCTMT for all of its covered employees.

DATED: April 11, 2013

/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.