

### MCTMT Struck Down by New York Supreme Court Ruling

Late last week the New York Supreme Court (the “Court”) granted a plaintiffs' motion for summary judgment and held that the Metropolitan Transportation Authority (“MTA”) payroll tax (also known as the “metropolitan commuter transportation mobility tax”, or “MCTMT”) was passed in violation of the New York State constitution. The MCTMT is projected to generate about \$1.26 billion in revenue this year alone. Unless the case is reversed on appeal, alternative funding sources and significant service cuts would be required of the MTA.

In brief, the Court essentially found that since the tax did not “serve a substantial state interest”, it violated the New York constitution. (Mangano, et al. v. Silver, et al., N.Y. S. Ct., No. 14444/10, 08/22/2012.) As this is New York constitutional law, the details of the case, including whether Nassau County could commence the case at all, are complex. Typically, local governmental entities lack the capacity to mount a constitutional challenge against a law. However, four exceptions to this rule exist, one of which is that local government challenges are allowed where the state statute impinges on “home rule” powers which each municipality is guaranteed under the New York constitution. Since the MCTMT statute impinged on the “home rule” of Nassau County, the Court stated a “home rule message” from the locality or localities affected by the law must have been granted. Failing to get this “home rule message” (as was the case here), New York can still pass a special law with a “certificate of necessity” from the governor. This “certificate of necessity” requires, in addition to the governor’s ruling, the approval of two-thirds of the members elected to each house of the New York State legislature. This vote did not happen. The only way around getting this legislative approval is if the tax serves a “substantial state interest” and thus is exempted from “home rule” law. The Court found that this was not the case with the MCTMT, as the tax served to solve a problem only the local area had – namely the MTA’s budget shortfall. Since no “substantial state interest” was present, “home rule” powers are applicable, and thus a “home rule message” or “certificate of necessity” was required.

Both the MTA and Governor Cuomo have stated that the ruling will be appealed. Four previous challenges to the MCTMT have already been dismissed, meaning the courts are split and thus, the issue is ripe for consideration by the Appellate Division.

In the meantime, taxpayers who have been filing this tax all along will rightfully want to know how to proceed. We advise that 1) taxpayers continue to file and to pay this tax while litigation continues; and 2) taxpayers file an amended MCTMT return as a “protective claim” method to preserve refunds in the event that the case is ultimately upheld.

The MCTMT was first enacted for employers beginning on March 1, 2009, and self-employed individuals beginning on January 1, 2009. The MCTMT returns are filed quarterly. However, a special rule for 2009 held that the initial MCTMT payments were due by November 2, 2009 (due to October 31, 2009, falling on a Saturday). Unless the state issues guidelines on how to protect your potential right to a



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refund, filers should proceed by filing amended “zero” MCTMT returns for previously filed returns (in essence reporting that no tax was due because the tax was inapplicable, and thus, the MCTMT returns should have shown zero tax due).

An amended MCTMT return must be filed within three years of the date the original return was filed or within two years of the date the tax was paid, whichever is later. Since the first return would have been due November 2, 2009, the deadline to file amended “protective” zero returns for all MCTMT taxes remitted is November 2<sup>nd</sup>, 2012.

New York State will more likely than not hold all claims for refund in abeyance, pending the final outcome of the litigation. As mentioned, we advise that taxpayers continue to file and to pay this tax in the meantime.

For further assistance, please contact Michael Mincieli, Stephen Bercovitch, or Jon Zefi.

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