

tax lawflash

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Potential Refund Claims: New York MTA Payroll Tax Held Unconstitutional

Taxpayers should act now to protect refund claims based on the New York Supreme Court's recent determination that the MTA Payroll Tax is unconstitutional.

On August 22, the New York State Supreme Court held that the New York State Metropolitan Commuter Transportation Mobility Tax (MTA Payroll Tax or MCTMT) violated the New York State Constitution.¹ Although the decision will be appealed, taxpayers should take action immediately (filing protective refund claims for 2009 by the due date of November 1, 2012) in order to protect their ability to claim refunds of the MTA Payroll Tax. Guidelines explaining these refunds will soon be released by the New York State Department of Taxation and Finance. Some large employers and many employees in New York City and surrounding counties may be entitled to hundreds of thousands, or even millions, of dollars in refunds.

Overview of MTA Payroll Tax

The MTA Payroll Tax is a 0.34% tax that was enacted in 2009 in response to the Metropolitan Transportation Authority's (MTA's) budget shortfall. (Slightly lower tax rates have applied to small employers since April 1, 2012.) The tax is imposed on employers (excepting only certain governmental agencies) that have paid wages subject to either Federal Insurance Contributions Act (FICA) taxes or railroad retirement taxes of more than \$312,500 per quarter to employees working primarily in, directed from, or residing within the Metropolitan Commuter Transportation District (MCTD). The MTA Payroll Tax also applies to all self-employed individuals, including partners of partnerships and members of limited liability companies that are treated as partnerships, with net earnings from self-employment of more than \$50,000 per year that is allocated to the MCTD. The MCTD includes New York City and Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester counties.

MTA Payroll Tax Unconstitutional

Various local governments within the MCTD challenged the MTA Payroll Tax as unconstitutional under the New York State Constitution. In *Mangano*, the Tenth District of the New York Supreme Court held that the MTA Payroll Tax violated the New York State Constitution because it was not passed by the New York State Legislature with a home rule message or by a message of necessity with a two-thirds vote of each house of the Legislature. As such, the court granted the plaintiffs' motion for summary judgment.

Potential Refund Claims

On August 28, the MTA issued an official statement that it will be appealing the ruling in *Mangano*.² Prior to *Mangano*, four constitutional challenges to the MTA Payroll Tax had been unsuccessful. The New York State Department of Taxation and Finance also has provided that taxpayers should continue to report and remit the tax.

1. See *Mangano v. Silver*, Index No. 14444/10 (N.Y. Sup. Ct. Aug. 22, 2012), available at <http://www.nassaucountyny.gov/agencies/CountyExecutive/NewsRelease/2012/documents/MSJdecision.MTAPayrollTax.pdf>.

2. Read the MTA's statement at <http://www.mta.info/news/stories/?story=786>.

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We **do not** recommend that any taxpayers refrain from reporting and remitting the MTA Payroll Tax because substantial penalties and interest would be applied to taxpayers if the MTA Payroll Tax is upheld on appeal.

Protective refund claims may be filed, however, in order to keep the statute of limitations open in the event that the MTA Payroll Tax is finally determined to be unconstitutional. The initial MCTMT returns and payments were due on October 31, 2009 (although returns and payments dated until November 2 were timely since October 31 fell on a Saturday), except for PromptTax filers, which were required to make payments on the same dates as their withholding tax payments.

Under the statute of limitations, refund claims must be filed within three years from the date the original return was filed or within two years from the date the tax was paid, whichever is later (returns filed early are considered to be filed on the due date). As such, taxpayers must act now in order to file protective refund claims by November 1, 2012, for the initial calendar 2009 tax period.

Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Washington, D.C.

Mary B. Hevener	202.739.5982	mhevener@morganlewis.com
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Palo Alto

Barton W.S. Bassett	650.843.7567	bbassett@morganlewis.com
William F. Colgin, Jr.	650.843.7270	wcolgin@morganlewis.com
William H. Gorrod	650.843.7221	wgorrod@morganlewis.com

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