

tax lawflash

October 18, 2012

New York Publishes MTA Payroll Tax Protective Refund Claim Procedures

Refund claims for employers should be filed on or before November 2, 2012.

On October 17, the New York State Department of Taxation and Finance (Department) published guidance regarding the procedures for taxpayers to file protective refund claims under the New York State Metropolitan Commuter Transportation Mobility Tax (MTA Payroll Tax or MCTMT).¹ As discussed in our LawFlash, "Potential Refund Claims: New York MTA Payroll Tax Held Unconstitutional,"² the New York Supreme Court recently held that the MTA Payroll Tax violated the New York State Constitution.³

While litigation in this matter is expected to continue, taxpayers may file protective refund claims to prevent potential refunds from being time-barred by the statute of limitations in the event that the MTA Payroll Tax is ultimately determined to be unconstitutional. Based on the Department's guidance, refund claims should be filed on or before November 2, 2012, for employers and on or before April 30, 2013, for self-employed individuals.

Protective refund claims may be filed through the following methods: 1) an online services account, if a company has one; 2) an electronic form;⁴ or 3) an automated telephone application, which is available at 518.485.2392. Partnerships may file one protective claim on behalf of all the qualified partners previously included on the partnership's group MCTMT return (Form MTA-505) using either an electronic form or an automated telephone application.

The protective refund claim applies to all prior and future MTA Payroll Tax filings. Taxpayers should not file amended returns in order to file the protective refund claims, and should continue to file and pay the MCTMT until further notice from the Department.

Contacts

If you have any questions concerning the issues discussed in this LawFlash, or need assistance in filing your claims, please contact any of the following Morgan Lewis attorneys:

Washington, D.C.

Mary B. Hevener	202.739.5982	mhevener@morganlewis.com
-----------------	--------------	--

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

1. Read the Department's guidance at http://www.tax.ny.gov/bus/mctmt/mctmt_legal_proceedings.htm.
2. Read our October 3, 2012, LawFlash at http://www.morganlewis.com/pubs/Tax_LF_MTA Payroll Tax Held Unconstitutional_03oct12.
3. 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>.
4. View the electronic MCTMT Protective Claim form at <https://www8.tax.ny.gov/MCPC/mcpcStart>.

Morgan Lewis

About Morgan, Lewis & Bockius LLP

With 24 offices across the United States, Europe, and Asia, Morgan Lewis provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labor and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. Our international team of lawyers, patent agents, benefits advisers, regulatory scientists, and other specialists—more than 1,600 legal professionals total—serves clients from locations in Almaty, Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Moscow, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

IRS Circular 230 Disclosure

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2012 Morgan, Lewis & Bockius LLP. All Rights Reserved.