

June 25, 2009

Ms. Jamie Woodward, Acting Commissioner
Department of Taxation and Finance
W. A. Harriman Campus
Building 9, Room 161
Albany, NY 12227

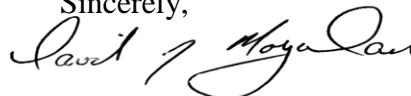
By e-mail: jamie_woodward@tax.state.ny.us

Re: Implementation of the Metropolitan Commuter Transportation Mobility Tax

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the implementation of the Metropolitan Commuter Transportation Mobility Tax. The NYSSCPA thanks the New York State Department of Taxation and Finance for the opportunity to comment.

The NYSSCPA's New York, Multistate and Local Taxation Committee deliberated the implementation and drafted the attached comments. If you would like additional discussion with us, please contact Wayne K. Berkowitz, Chair of the New York, Multistate and Local Taxation Committee, at (212) 832-0400, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS ON IMPLEMENTATION OF THE METROPOLITAN
COMMUTER TRANSPORTATION MOBILITY TAX**

June 25, 2009

Principal Drafters

**Wayne K. Berkowitz
Steven J. Eller
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Adam Lambert**

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New York State Society of Certified Public Accountants

Comments on Implementation of the Metropolitan Commuter Transportation Mobility Tax

Thank you for inviting our comments regarding the implementation of the newly enacted Metropolitan Commuter Transportation Mobility Tax (“MCTMT”). The New York State Society of Certified Public Accountants (the “Society”) values the opportunity to work with the New York State Department of Taxation and Finance so that the MCTMT can be administered in a way that is both practical and fair for the Department and our members.

Some of our members were invited to participate in a recent conference call regarding the implementation of the MCTMT. Since that time, the Department has issued TSB-M-09(1) MCTMT. We are gratified that many of the points that were raised during the discussion are incorporated as part of the TSB-M. However, we believe that certain issues remain and should be accepted so as to effectively implement the MCTMT.

Computation of Wage Base

The tax is levied on an employer using the “FICA wages” (as outlined in Internal Revenue Code Section 3121) as a base. This would require an employer to calculate four different “wage bases” for the New York State (“NYS”) payroll-based taxes. State unemployment tax and state income tax withholding both use separate definitions of the term “wages,” and while New York City (“NYC”) follows NYS (which follows Federal) in terms of “wages” for income tax withholding purposes, this MCTMT would require an employer to use a separate calculation for the population of employees to which the tax applies (*i.e.*, 12 counties as opposed to 5 for NYC income tax) and would require a separate breakdown of the FICA taxable wages from the NYS and/or NYC employee base. This would create a substantial burden on employers, and we would recommend that, at a minimum, the same wage definition be used for NYS and NYC withholding tax purposes.

It is unclear at this point how this tax will be implemented and reported for employers, leading to the following questions that need to be clarified. For non-PromptTax Program filers, will the tax be remitted on Form NYS-1, or will there be a separate form required? Additionally, will these taxes be reported and reconciled quarterly on form NYS-45 (thereby requiring a revision to this form) or will employers be required to complete an additional form to report payroll and the corresponding taxes? Will there be a requirement to report the corresponding wages for the employees to which this tax relates (similar to Part C of current form NYS-5), and if so, would this create an additional compliance burden on employers as noted above as they would have to make

two additional calculations (one for the counties and one using the FICA wage base)? We believe that clarification on these questions will lead to more effective administration of the MCTMT.

Streamlining Return and Estimated Tax Filings

Except for PromptTax Filers, the new law provides that the MCTMT must be reported and paid for each calendar quarter by the last day of the month following the end of the quarter as follows:

Quarter	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

While these due dates coincide with the due dates for employer quarterly payroll tax filing, for self-employed individuals, these due dates are inconsistent with the due dates for their quarterly estimated tax filing due dates (*i.e.*, April 15th, June 15th, September 15th and January 15th). Accordingly, in order to simplify the implementation of the reporting and payment of this tax, we suggest that technical corrections to the law be made for self-employed individuals that would change the "Quarter" and "Due Date" to be consistent with the quarterly estimated tax due dates. Furthermore, we suggest that the quarterly estimates tax voucher include a line for the MCTMT so that it is included in the individuals' quarterly estimated tax payment. Additionally, rather than having to file a separate year-end reconciliation, we recommend that self-employed individuals be able to perform this reconciliation on their personal income tax returns.

Allocation and Apportionment of the MCTMT

The TSB-M provides four successive tests to determine whether an employer is to allocate the services of an employee to the Metropolitan Commuter Transportation District ("MCTD"). The allocation provision provides an all or nothing approach whereby the services of a covered employee are either wholly within or without the MCTD. Under this allocation regime, the wages of an employee regularly working both within and without the MCTD will be unfairly taxed (in some cases to the State and in others to the taxpayer). While we understand that an all or nothing approach might be easy to administer, we believe that a reasonable apportionment scheme based on the location of employee services would present a fairer result. As partners and partnerships (including an LLC treated as a partnership) are required to apportion the MCTMT using either the partnership's books and records or a three factor business allocation percentage, we believe that employers and their employees should be treated the same.

Modification for the MCTMT on New York State Tax Returns and Reports

The TSB-M states in this section that the MCTMT is not deductible for the purposes of computing New York State taxes imposed under various articles of the Tax Law and must be added back to the relevant tax base. Clearly taxes imposed on income are required to be added back to the various New York tax bases. However, the MCTMT is an excise tax based on wages or self employment income, not an income based tax. Accordingly, we believe that this portion of the TSB-M is incorrect and no provision should be made for adding the MCTMT back to the tax base.

We appreciate the opportunity to forward you our comments. Working with the Department has proven successful and we look forward to continued cooperation in the future.