

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

TSB-A-11(7)I
Income Tax
October 6, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1101005A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether employees of the Metro-North Commuter Railroad, who provide maintenance services on rail line equipment of Metro North and are members of Petitioner's labor union are required to pay state income taxes to the state(s) where the employees work or the state where they reside. Petitioner's basis for this request is the Amtrak Reauthorization and Improvement Act of 1990, PL 101-322 (ARIA). The ARIA restricts states from imposing income tax on employees who perform regular assigned duties on a railroad unless the employees are a resident of the state.

We conclude that Petitioner's union members, who are employed by the Metro-North Railroad, are not regularly assigned to duties on a railroad in more than one state as required by ARIA (49 USC §11502(a)). Therefore, Petitioner's union members are required to pay income tax to the State(s) in which they work, and to the State in which they reside.

Facts

The members of Petitioner's union are employed as maintenance of equipment workers for the Metro-North Commuter Railroad in Stamford, Connecticut and the Sunnyside Yard in New York City. These union members are regularly assigned to work in either New York or Connecticut; however, they are also directed by the needs of the Metro-North Railroad to work in the other state (Connecticut or New York) on a frequent basis. But, unlike operations workers or maintenance of way workers for Metro North, who are regularly assigned to work on the New Haven Line and work in both New York and Connecticut, Petitioner's members who perform work in both New York and Connecticut are currently required to pay income taxes to the state where they perform services and not solely to the state where they reside.

Analysis

Previously, this Department issued TSB-A-93(3.1)I, which modified four earlier Advisory Opinions on this issue. TSB-A-93(3.1) I concluded, pursuant to Title 49 USC §11502(a), that only Metro-North employees whose duties regularly assign them to work on the New Haven Line (the only line that travels between New York and Connecticut) and that work on a locomotive, car, or other track-borne vehicle, or are maintenance of way employees, qualify for the income tax exemption. Title 49 USC §11502(a) states that:

No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Board under this part to an employee who performs regularly assigned duties as such employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence. (emphasis added)

Petitioner's union members are maintenance of equipment workers and are not regularly assigned to work on the New Haven Line. Petitioner, however, cites to an Oregon Tax Court decision, *Department of Revenue v. Hughes*, (TC 4460), March 14, 2001), in support of his position that the income tax provisions of Title 49 USC §11502(a) apply to his members. The *Hughes* case, however, involved a different provision of ARIA. The taxpayer in *Hughes* was an employee who "directly affects commercial motor vehicle safety in the course of employment." In order to be exempt under ARIA, this type of employee must perform regularly assigned duties in two or more states as such an employee with respect to a motor vehicle. Title 49 USC § 11504(b)(1) (1995). This case has no relevance to this Petition because a different provision of ARIA applies to employees of Metro-North. That provision, quoted above, requires an employee to perform regularly assigned duties as such employee on a railroad in more than one state. Accordingly, because Petitioner's union members are not employees who perform regularly assigned duties on a railroad in more than one state, they are not covered by 49 USC §11502(a). Therefore, Petitioner's members must pay tax in both their resident state and the state in which they work. If, however, Petitioner's members were regularly assigned to work on the New Haven Line, then the provisions of Title 49 USC §11502(a) would apply to them.

DATED: October 6, 2011

/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.