

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(6)I
Income Tax
August 29, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C151130B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the Metropolitan Commuter Transportation Mobility Tax will be imposed on Petitioner, as an employer, for that part of its payroll expense attributable to wages paid to federal work-study students in its employ.

We conclude that imposition of the Metropolitan Commuter Transportation Mobility Tax on Petitioner will not include imposition of the tax for that part of its payroll expense attributable to wages paid to federal work-study students in Petitioner’s employ.

Facts

Petitioner maintains an office and transacts business within New York, and pays wages that are taxable under the Tax Law and, therefore, withholds tax from such wages. Petitioner has a payroll expense in excess of \$312,500 per calendar quarter.

Petitioner engages in business in the city of New York. Petitioner’s employees include federal work-study students employed in the city of New York.

Analysis

The Metropolitan Commuter Transportation Mobility Tax (the “MCTMT”) is imposed on employers who engage in business within the Metropolitan Commuter Transportation District (the “MCTD”), under Article 23 of the Tax Law, based on their payroll expense related to employees within the MCTD. *See* Tax Law § 801. The MCTD includes the city of New York. *See* Tax Law § 800(a) and Public Authorities Law § 1262.

Under the facts of this Advisory Opinion, Petitioner is an employer who engages in business within the MCTD. Therefore, Petitioner meets the definition of “employer” for purposes of Article 23. *See* Tax Law § 800(b). Likewise, the work-study students in its employ are employed within the MCTD and so are “covered employees.” *See* Tax Law §§ 800(d) and 801(c). These conclusions of law are assumed by Petitioner in its request for an advisory opinion.

Since the work-study students whose wages are the subject of Petitioner’s request are employed in the city of New York, i.e., within the MCTD, and since Petitioner otherwise falls within the provisions of Article 23 of the Tax Law, the only issue to be decided in this Advisory Opinion is whether the part of an employer’s payroll expense, if any, attributable to wages paid to federal work-study students should be excluded from imposition of the MCTMT.

