

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (3) I
Income Tax
March 18, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I910118A

On January 18, 1991, a Petition for Advisory Opinion was received from Metro-North Commuter Railroad, 347 Madison Avenue, New York, New York 10017.

The issue raised by Petitioner, Metro-North Commuter Railroad, is how the application of the Amtrak Reauthorization and Improvement Act of 1990 (hereinafter the "Act") affects employees traveling to more than one state during the course of their employment, including the meaning of the term "regularly assigned" as applied to the provisions of the Act.

Petitioner operates commuter train service within New York State and Connecticut. Petitioner employs a number of employees who perform work in both states, some of whom perform this work on trains and some of whom perform this work in offices or along Petitioner's right-of-way. Many of Petitioner's employees are residents of Connecticut.

Federal Public Law 101-322, the Act, amended various provisions of Title 49 of the United States Code relating to state and local taxation of compensation paid to employees of interstate rail carriers, interstate motor carriers and interstate motor private carriers and applies to compensation paid on or after July 6, 1990.

Section seven of the Act amends section 11504 of Title 49 of the United States Code with regard to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of Chapter 105 of such Title 49 and states, in pertinent part, that:

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

Petitioner has four categories of employees for which it wants an opinion as to whether they are covered by section seven of the Act:

- A. Employees who perform work on locomotives and who travel between states while performing such duties. For example, a railroad conductor or engineer who works on Metro-North's New Haven Line performing duties on a locomotive, who travels back and forth from New York to Connecticut during the performance of his or her duties.
- B. Employees who perform all of their work in a state other than their residence returning to their resident state only when their duties are finished.

TSB-A-91 (3) I
Income Tax
March 18, 1991

- C. Employees who perform duties, not on locomotives, in more than one state, who were previously covered by the section of the law which covered employees: "maintaining roadways, signals, communications and structures or in operating motor trucks from railroad terminals."
- D. Employees, such as claims agents, railroad police, etc., who do not perform their duties on locomotives and are not employees "maintaining roadways, signals, communications and structures or in operating motor trucks from railroad terminals" but who do regularly perform their duties in more than one State.

The following is a partial list of occupations that may require an individual to perform work in more than one state for Petitioner.

nurse	mechanical supervisor
instructor	mechanical inspector
safety inspector	purchasing agent
material/storehouse	engineering supervisor
supervisor	construction supervisor
Vice President of Operations	transportation
	supervisor
janitor	trial officer
station supervisor	traveling auditor
custodial supervisor	revenue accountant
yardmaster	revenue supervisor
Chief Mechanical Officer	marketing manager

If an employee of Petitioner is not a resident of New York State for personal income tax purposes under section 605(b)(1) of the Tax Law, and such employee is paid compensation for regularly assigned duties performed in New York State and one or more other states, the compensation paid on or after July 6, 1990 does not constitute income derived from New York State sources and is not subject to New York State income tax, even though the employee performed services in New York State.

When applying the provisions of the Act for New York State income tax purposes, such an employee is considered to be performing "regularly assigned" duties in more than one state if such employee's job description requires the employee to perform services in at least two states on a systematic basis regardless of the percentage of time spent at each location. If an employee has no standard route and is assigned duties in more than one state on a random basis, that employee would not be considered to be performing "regularly assigned" duties in more than one state.

Accordingly, with respect to New York nonresident employees referred to in categories A, C and D above, the employees who are regularly assigned to perform duties both in New York State and Connecticut, the compensation paid on or after July 6, 1990 for the performance of such duties will not be subject to New York State income tax. Therefore, such compensation paid on or after July 6, 1990 is not subject to New York State withholding requirements.

With respect to New York nonresident employees referred to in categories A, C and D who are assigned duties on a random basis, even if duties are performed in New York State and Connecticut, such employees shall not meet the

TSB-A-91 (3) I
Income Tax
March 18, 1991

requirements of section seven of the Act exempting such employees from New York State income tax. The compensation paid to such an employee on and after July 6, 1990 for duties performed in New York State constitutes income from New York sources pursuant to section 631(b) of the Tax Law. Such compensation is subject to New York State income tax and New York State withholding requirements.

With respect to the New York nonresident employees referred to in category B who perform their duties exclusively in New York State, the compensation paid on or after July 6, 1990 for the performance of such duties constitutes income from New York State sources pursuant to section 631(b) of the Tax Law. Such compensation is subject to New York State income tax and New York State withholding requirements.

The determination of whether an employee is "regularly assigned" duties to be performed in New York State and one or more other states cannot be made from the occupation titles listed herein. Such question is a factual matter not susceptible of determination in an advisory opinion. An advisory opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts". Tax Law, §171, subd twenty-fourth, 20 NYCRR 901.1(a).

It should be noted, that New York nonresident employees who receive compensation subject to New York State income tax are required to file Form IT-203, Nonresident and Part-Year Resident Income Tax Return, and report to New York any items on income derived from or connected with New York sources. If tax is not required to be withheld, estimated tax is required to be paid.

DATED: March 18, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.