

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

TSB-A-13(2)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
October 17, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M110524A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it is subject to the Metropolitan Commuter Transportation Mobility Tax (MCTMT).

We conclude that Petitioner is not subject to the MCTMT, because it is not engaged currently in business in the Metropolitan Commuter Transportation District (MCTD).

Facts

Petitioner is a domestic corporation whose only facility is located in Stamford, Connecticut. Petitioner has twelve employees, all of whom work out of the Stamford facility. Eight of Petitioner's employees, including the company's CEO, are New York State residents, and some of them, including the CEO, reside within the MCTD. Petitioner currently withholds New York State income tax for its employees who are New York residents. According to Petitioner's Operations Manager, "typically none of our NY employees [*i.e.*, the New York State residents] work from home."

Analysis

Tax Law § 801 imposes a tax on "the payroll expense of every employer who engages in business within the [MCTD]." Tax Law § 801 (a). The MCTD includes all the counties of New York City as well as the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. *See* Public Authorities Law § 1262. Employers engaged in business within this area are subject to the MCTMT based on the payroll expense for all of their "covered employee[s]," defined as employees who are "employed within the MCTD." Tax Law § 800 (d). Therefore, to determine whether Petitioner is subject to the MCTMT, we must establish whether it is an employer for purposes of the statute, and then determine whether it is engaged in business within the MCTD.

For purposes of the MCTMT, with certain exceptions not applicable here, a taxpayer is an employer if it is subject to withholding tax under Tax Law § 671 and has a payroll expense in excess of \$312,500 in any calendar quarter. *See* Tax Law § 800 (b). Employers subject to the tax are responsible for remitting MCTMT on a quarterly basis. *See* Tax Law § 804 (a). Petitioner stated that it withholds taxes from its employees. Therefore, for purposes of this opinion, we assume without deciding that Petitioner is an employer for purposes of the MCTMT.

Article 23 of the Tax Law, which imposes the MCTMT, does not specify what it means to be "engaged in business" in the MCTD. However, § 806 of the Tax Law extends the provisions of the personal income tax in Article 22 of the Tax Law to the administration of the MCTMT. The personal income tax is imposed on nonresidents on their New York source income attributable to a business,

trade, profession, or occupation carried on in this State. The personal income tax “carried on” standard is analogous to the MCTMT “engaged in business” standard. The personal income tax regulations provide that:

A business, trade, profession, or occupation is carried on within New York State by a nonresident when such nonresident occupies, has, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency or other place where such nonresident’s affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions without New York State. This definition is not exclusive. Business is carried on within New York State if activities within New York State in connection with the business are conducted in New York State with a fair measure of permanency and continuity... 20 NYCRR, § 132.4(a)(2)

Applying the concepts in these regulations, we conclude that Petitioner is not engaged in business in the MCTD. Petitioner’s facts indicate that it is not engaged in continuous, frequent or regular activities in New York State. Petitioner is located in Connecticut and it maintains no place of business within New York. While an employee’s residence may be considered an “office” if it is used in the regular course of the corporation’s business, Petitioner maintains that its employees typically do not work from home. The employees’ base of operations and the place from which Petitioner directs and controls its employees is Petitioner’s location in Connecticut. Although some of Petitioner’s officers and employees reside in New York State and, therefore, their wages are taxable in New York State, their services are performed in Connecticut. Finally, the actual seat of management of the corporation is at its Stamford, Connecticut location.

Based on the facts presented, Petitioner is not engaged in business in the MCTD, and therefore, is not subject to the MCTMT.

DATED: October 17, 2013

/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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.