

New York enacts payroll tax on employers and self-employed individuals

In Brief

The new Metropolitan Commuter Transportation Mobility Tax ("MCTMT") enacted in May will have an impact on employees and law firm partners receiving a share of distributable income attributed to New York City. The new law will require partners to file individual estimates and returns.

Tax on Payroll in New York City Region Enacted

On May 7, 2009, Governor Patterson signed the MCTMT into law as part of a deal to fund the region's Metropolitan Transit Authority. Effective March 1, 2009, the MCTMT imposes a new payroll tax on certain employers and self-employed individuals engaging in business in the Metropolitan Commuter Transportation District ("MCTD"). The MCTD includes the five boroughs of New York City, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Dutchess counties.

Effect on Law Firms and their Partners

Law firms with offices in New York City and the surrounding New York counties will now be subject to this new payroll tax on their law firm employees. The partners of law firms who receive income from their New York City office will also have to pay this tax on their New York apportioned income.

Impact on Employers

The new law imposes on employers a 0.34% tax on the payroll expense paid to "covered employees" in the MCTD. To determine if an employee is deemed a covered employee, the State utilizes the same four factor test (i.e. localization, base of operations, direction & control, and residency) that is used to determine to which state an employee should be allocated for unemployment insurance purposes. Payroll expense includes all wages and compensation paid to these employees. This tax burden must be borne by the employers and may not be deducted from the wages or compensation of any employee. Moreover, any federal deduction for this tax will not be allowed for New York State and New York City tax purposes.

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Law Firm Services

Example: The New York City office of a law firm has an October payroll of \$4,000,000. The law firm's liability for this new payroll tax would be \$13,600 ($\$4,000,000 \times 0.0034$).

The tax on employers takes effect on and after March 1, 2009. The tax must be remitted with the same frequency as the employer's regular withholding remittance obligations. For electronic filers (PromptTax), the initial payment must be submitted on the same date as their first withholding tax payment that is due on or after October 31, 2009. For other filers, the initial payment of the payroll tax must be made along with the employer's third quarterly payment due in tax year 2009 (November 2nd, due to October 31st falling on a Saturday).

Impact on Self-Employed Individuals

The tax is also imposed, at the same rate, on the net earnings of self-employed individuals that are attributable to the MCTD if their apportioned earnings exceed \$10,000 for the tax year. If the self-employed individual is a partner in a partnership, LLP or LLC, the apportioned earnings are based on the MCTD apportionment. This apportionment is calculated on the property, payroll and receipts within MCTD divided by these same three factors everywhere.

Example: The partners in a Boston-based law firm, which has an office in New York City each have earnings of \$1,000,000 of firm income and have an MCTD apportionment percentage of 15%. A Boston partner and a New York City partner would both pay tax of \$510 ($\$1,000,000 \times 15\% \times 0.0034$).

Each self-employed individual will have to make quarterly estimated payments of this tax. Additionally, there will be a reconciliation that each self-employed individual will be required to file, which will be due the 30th day of the 4th month after the close of their tax year, which would be April 30th. The first payment for self-employed individuals will be November 2, 2009 (due to October 31st falling on a Saturday) and cover the first 7 months of self-employment income generated during the year. Payments will be due quarterly thereafter on January 31, April 30, July 31 and September 30. It is our understanding that payments can only be made via Telefile ACH or E-File / E-Payment (no paper checks will be accepted by the State).

It is also our understanding that New York State will mandate a "withholding" of the tax for all nonresident New York State partners similar to the nonresident income tax withholdings (Form IT-2658). This "withholding" will not be deemed to be a composite filing; rather it will be deemed an estimated payment made on behalf of the nonresident partner. New York State resident partners will need to make individual estimated payments.

The forms to make estimated payments as well as the annual filing had not been released at the time the tax was announced.

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Firms may need additional assistance in establishing systems, policies and procedures to address this new tax. Our professionals at PwC have extensive experience assisting clients with payroll taxes. If you wish to further discuss this issue please contact Stanley Kolodziejczak at (646) 471-3160, Gregg Sincoff at (646) 471-1335, or Paul Bullock at (646) 471-4690.

Solicitation

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