

NEW YORK APPELLATE COURT REVERSES LOWER COURT AND UPHOLDS UNPOPULAR METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX

State & Local Tax Alert
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On June 26, one of New York's intermediate appeals courts overturned a lower court ruling and found the Metropolitan Commuter Transportation Mobility Tax (MCTMT) constitutional. The MCTMT was enacted in 2009 and imposes a tax of between 0.11 percent and 0.34 percent of quarterly payroll expense on employers located within the Metropolitan Commuter Transportation District (the five boroughs of New York City and seven surrounding counties) whose quarterly payroll exceeds \$312,500 and 0.34 percent of compensation received by self-employed individuals earning \$50,000 or more in the district.

Nassau County and other plaintiffs challenged the MCTMT and a local supreme court struck down the tax in 2012. The court held that the provision constituted a special law that did not serve a substantial state interest and was thus unconstitutionally passed without either a home rule message or a two-thirds voting majority. The ruling unleashed a flood of protective refund claims for the previously-paid taxes, but the Tax Department continued to collect the tax as it appealed the ruling. The intermediate appeals court has now reversed the lower court's decision, holding that the investment in mass transit from the MCTMT revenue serves a substantial state interest and therefore a home rule message or supermajority was not required to enact the MCTMT.

An appeal to the Court of Appeals is likely, so the status of the protective refund claims will likely remain in limbo for some time. Taxpayers are advised to continue to file protective claims as needed until the case is finally resolved.

Attorneys

William Comiskey
Christopher Doyle
Debra Herman
Timothy Noonan
Elizabeth Pascal

Practices & Industries

State & Local Tax

