

July 9, 2013



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## New York Court Upholds the MTA Payroll Tax

The Appellate Division of the New York Supreme Court has held that the Metropolitan Commuter Transportation Mobility Tax (“MTA Payroll Tax”) is constitutional, thereby reversing a lower court decision invalidating the assessment.

The MTA Payroll Tax was enacted in 2009 by the New York Legislature to help fund the Metropolitan Transportation Authority. Commencing in November 2009, employers became liable for the MTA Payroll Tax if they were required to withhold New York state income tax from the wages paid to employees and the services rendered by the employees were allocated to the twelve counties that comprise the New York metropolitan commuter transportation district. The tax also applies to certain individuals who have net earnings from self-employment and who are engaged in business within the district. The reporting and tax thresholds generally impose liability only if an employer has a quarterly payroll expense that exceeds \$312,500, or a self-employed individual has earnings that exceed \$50,000 allocable to the district.

On June 26, 2013, the Appellate Division of the New York Supreme Court ruled that the MTA Payroll Tax was adopted without violating the home rule provisions of the New York constitution. This decision reversed an August 22, 2012 ruling of the New York Supreme Court that the MTA Payroll Tax was unconstitutional. Following the August 22, 2012 ruling, the New York Department of Taxation and Finance established procedures taxpayers could use to file protective claims for refunds based on the Supreme Court’s ruling. Protective refund claims filed under those procedures were held in abeyance while the Supreme Court’s ruling was appealed. The Appellate Division’s decision will further delay processing of those protective refund claims. The viability of protective refund claims will now depend on the outcome of an appeal (if taken) of the Appellate Division’s decision.

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