

NEW YORK'S TAX DEPARTMENT ANNOUNCES METHODS TO FILE PROTECTIVE REFUND CLAIMS FOR THE METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX

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In 2009, New York State adopted legislation intended to create a new funding source for the Metropolitan Transportation Authority (MTA), which operates public transportation in the downstate Metropolitan Commuter Transportation District. The tax is called the MCTMT, and it is an additional withholding tax on most employers (and a direct tax on most self-employed individuals) operating within the District.

Now the future of the MCTMT is in question. In *Mangano v. Silver*, Index No. 14444/10 (N.Y. Sup. Ct., Nassau Cnty., Aug. 22, 2012), the court found that the MCTMT was adopted in violation of certain procedural safeguards in the New York State Constitution. The State and the MTA are appealing the decision.

Yesterday the New York State Department of Taxation and Finance issued a Notice detailing what taxpayers should do pending the final outcome of the case. Regardless of how *Mangano* ultimately turns out, all taxpayers who have been paying the MCTMT are instructed by the Department to continue to pay the tax and file the appropriate returns.

Although the Notice does not advise taxpayers to do so, it offers procedures for submitting a protective refund claim for the taxes already paid. Generally, a claim for a refund must be filed within three years of filing a tax return. If you're an employer and have been paying the MCTMT since its inception, you will need to file a protective refund claim in order to prevent any portion of your claim from being barred by the three-year statute of limitations. In order to protect an employer's right to a refund of the MCTMT it paid on or before November 2, 2009 (payment of the MCTMT began in November 2009), a protective refund claim must be filed on or before November 2, 2012. For self-employed individuals subject to the MCTMT, in order to secure a refund for all MCTMT paid since its inception, a protective claim must be filed on or before April 30, 2013.

The Notice is available online. Taxpayers cannot file a protective refund claim by amending an MCTMT return, and there is no "paper" option for filing a protective refund claim. Instead, taxpayers must use one of the three methods the Department

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describes in the Notice: use of the taxpayer's on-line account with the Department, completion of an on-line form, or use of an automated telephone application. The Department seems to have made the filing of protective refund claims very easy.

The Hodgson Russ LLP SALT Group urges all of our clients and contacts who have paid the MCTMT to file protective refund claims using one of the prescribed methods by November 2.