

New York State Appellate Court Declares Metropolitan Commuter Transportation Mobility Tax Constitutional

July 9, 2013

Overview

The Appellate Division (2nd Dept.) of the New York State Supreme Court recently ruled in *Mangano v. Silver*¹ that the Metropolitan Commuter Transportation Mobility Tax (“MCTMT”) as enacted by the New York Legislature was not in violation of certain provisions of the New York State Constitution. This reversed an earlier ruling by the New York State Supreme Court, Nassau County (a lower court) that the MCTMT legislation was unconstitutionally enacted.² This Tax Alert summarizes this decision.

Background

The MCTMT generally applies at a rate of up to 0.34% on compensation paid to employees based in the Metropolitan Commuter Transportation District (“MCTD”) and on self-employment income sourced to the MCTD.³ The tax became effective March 1, 2009, and its revenue is dedicated to the New York State Metropolitan Transportation Authority. The tax is administered under procedures similar to those of the New York State personal income tax.

Summary of the Court’s Ruling

Article IX, Section 2(b)(2) of the New York State Constitution (the “Home Rule Clause”) normally prevents the State’s Legislature from enacting laws affecting “the property, affairs or government” of local governments unless such a special law is requested by a super-majority vote of the local legislature (referred to as a “home rule message”). However, an exception to the Home Rule Clause exists for special law that serves a substantial State concern. Due to the importance of mass transit to the health of both the New York City region and entire New York State economy, the MCTMT was found to have fulfilled a substantial State concern and its enactment was not in violation of the Home Rule Clause. Therefore, the decision of the lower court was reversed.

Since the New York State Department of Taxation and Finance has continued to collect the MCTMT while this matter was under appeal, taxpayers who are in compliance with the MCTMT provisions should not be affected by the ruling. Based on the Appellate Court’s decision, protective refund claims filed by taxpayers in the procedure established by the Department⁴ will not be granted.

The local governments involved in this dispute may request a review of this decision by the New York State Court of Appeals (the highest court in the State). At the time of this writing, no appeal has been filed.

¹ 2013 N.Y. App. Div. LEXIS 4699; 2013 NY Slip Op 4783 (June 26, 2013).

² See our previous Multistate Tax Alert dated September 6, 2012, “*New York State Court Declares MTA Payroll Tax Unconstitutional*” available at: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_NY_Alert_9-6-2012.pdf.

³ N.Y. Tax Law Article 23, § 801. The MCTD consists of New York City and Nassau, Suffolk, Westchester, Rockland, Dutchess, Orange and Putnam Counties. See N.Y. Tax Law Article 23, § 800. There are certain exceptions to the tax that are not addressed in this Tax Alert.

⁴ See http://www.tax.ny.gov/bus/mctmt/mctmt_legal_proceedings.htm.

Contacts

If you have questions regarding this court decision or pertaining to other New York State or New York City tax matters, please contact any of the following Deloitte Tax professionals.

Abe Teicher
Partner
Deloitte Tax LLP, New York
ateicher@deloitte.com
(212) 436-3370

Theresa Hall
Director
Deloitte Tax LLP, New York
thall@deloitte.com
(212) 436-3218

Russ Banigan
Director
Deloitte Tax LLP, Jericho
rbannigan@deloitte.com
(516) 918-7283

Mary Jo Brady
Senior Manager
Deloitte Tax LLP, Jericho
mabrady@deloitte.com
(516) 918-7087

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2013 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited