

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-14(2)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
July 2, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M121109A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether nonqualified deferred compensation earnings are considered taxable for purposes of the Metropolitan Commuter Transportation Mobility Tax (MCTMT) at the time the earnings become vested to the employee or at the time the earnings are distributed to the employee.

We conclude that, for purposes of the MCTMT, nonqualified deferred compensation earnings are earned at the time the earnings become vested to the employee.

Facts

Petitioner is a software company based in Florida that currently has nine employees employed within the Metropolitan Commuter Transportation District (MCTD).

Analysis

Tax Law § 801 imposes a tax on every employer who engages in business within the MCTD that has payroll expenses in excess of \$312,500 in any calendar quarter. For purposes of determining an employer's MCTMT liability, payroll expense consists of the "wages and compensation," as defined in §§ 3121 and 3231 of the Internal Revenue Code (IRC), the employer pays to its employees who are employed within the MCTD.¹ Tax Law § 800 (c), (d). These IRC provisions determine not only what is considered wages for payroll expenses subject to the MCTMT, but also, in some instances, when the payroll expense is subject to the tax. Under IRC § 3121 (v)(2)(a), employer contributions to nonqualified deferred compensation plans are considered earned "when the services are performed," or "when there is no substantial risk of forfeiture of the rights to such amount," whichever is later. Therefore, following the federal treatment, contributions to nonqualified deferred compensation plans for covered employees in the MCTD are considered taxable payroll expenses for purposes of determining an employer's MCTMT liability at the time the later of the two federal tax

¹ In computing payroll expense, the annual caps in IRC § 3121(a)(1) and IRC § 3231(e)(2)(A)(i) on the amount of wages and compensation of covered employees subject to social security tax and the railroad retirement tax, respectively, do not apply.

criteria is satisfied, which normally will be when the contributions vest. The active date of distribution is irrelevant for purposes of determining MCTMT liability.

DATED: July 2, 2014

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.