

New York Publishes MTA Payroll Tax Protective Refund Claim Procedures

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Refund claims for employers should be filed on or before November 2, 2012.

On October 17, the **New York State Department of Taxation and Finance (Department)** published guidance regarding the procedures for taxpayers to file protective refund claims under the **New York State Metropolitan Commuter Transportation Mobility Tax (MTA Payroll Tax or MCTMT)**.^[1] As discussed in our LawFlash, "Potential Refund Claims: New York MTA Payroll Tax Held Unconstitutional,"^[2] the **New York Supreme Court** recently held that the MTA Payroll Tax violated the New York State Constitution.^[3]

While litigation in this matter is expected to continue, taxpayers may file protective refund claims to prevent potential refunds from being time-barred by the statute of limitations in the event that the MTA Payroll Tax is ultimately determined to be unconstitutional. Based on the Department's guidance, refund claims should be filed on or before November 2, 2012, for employers and on or before April 30, 2013, for self-employed individuals.

Protective refund claims may be filed through the following methods: 1) an online services account, if a company has one; 2) an electronic form;^[4] or 3) an automated telephone application, which is available at 518.485.2392. Partnerships may file one protective claim on behalf of all the qualified partners previously included on the partnership's group MCTMT return (Form MTA-505) using either an electronic form or an automated telephone application.

The protective refund claim applies to all prior and future MTA Payroll Tax filings. Taxpayers should not file amended returns in order to file the protective refund claims, and should continue to file and pay the MCTMT until further notice from the Department.

^[1]. Read the Department's guidance [here](#).

^[2]. Read our October 3, 2012, LawFlash [here](#).

[3]. See *Mangano v. Silver*, Index No. 14444/10 (N.Y. Sup. Ct. Aug. 22, 2012), available [here](#).

[4]. View the electronic MCTMT Protective Claim form [here](#).

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