

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

TSB-A-14(1)MCTMT
Metropolitan Commuter
Transportation Mobility Tax
July 2, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M110728B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether his occasional performances in the Metropolitan Commuter Transportation District (MCTD) and the presence of his business manager and accountant in the MCTD subject Petitioner to the Metropolitan Commuter Transportation Mobility Tax (MCTMT).

We conclude that the presence of Petitioner's business manager and accountant in the MCTD does not render any of Petitioner's net earnings from self-employment subject to MCTMT. However, Petitioner is subject to the MCTMT on the net earnings he derives from performances in the MCTD.

Facts

The Petitioner is a non-resident musician who has been touring and making albums for many years. He currently performs several times a year in the MCTD. Petitioner does not maintain his own office within the MCTD. However, Petitioner's accountant and business manager are located within the MCTD. The accountant and business manager both have other clients in addition to Petitioner, and neither is an employee of the Petitioner.

Analysis

Tax Law § 801 (a)(2) imposes a tax on earnings from self-employment on individuals who have earnings attributable to the MCTD if those earnings for the taxable year exceed \$50,000. *Net earnings from self-employment* means an individual's net earnings from self-employment as defined under the Internal Revenue Code (IRC). *See* IRC § 1402 (a); *also see* Tax Law § 800 (e). Net earnings from self-employment, for purposes of IRC § 1402 (a), means gross income derived by any individual from a trade or business carried on by such individual. *See* IRC § 1402 (a). The terms "trade" and "business" as used in IRC § 1402 (a) have the same meaning as used in IRC § 162. *See* IRC § 1402 (c).

Petitioner's business manager and accountant provide professional services to Petitioner on a non-exclusive basis. The manager and accountant are not, for the purposes of the MCTMT, agents of Petitioner engaged in Petitioner's business. Therefore, their performance of services for Petitioner in the MCTD does not subject Petitioner to the MCTMT.

Petitioner, a professional musician, engages in his trade or business in the MCTD when he performs in the MCTD. Accordingly, he will be liable for MCTMT on all his net earnings derived from his performances in the MCTD, assuming those earnings exceed \$50,000 for the taxable year.

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.