

Important Tax Notices for NY Businesses



FILING AND FEE CHANGES FOR IT-204-LL FILERS

According to the instructions prepared by the Department of Taxation and Finance, Form IT-204-LL must be filed by every domestic or foreign Partnership, Limited Liability Company (even disregarded LLCs) or Limited Liability Partnership that is required to file a New York State partnership return and that has any income, gain, loss, or deduction from New York sources.

The following entities are not subject to the filing fee: those filing a return solely because they have a New York resident partner and those who are dormant. The filing fees range from \$25 to \$4,500. Multiple-tier LLCs/LLPs will be taxed at each separate tier, with no credit for the fee paid by the lower tier entity.

If a regular partnership (not an LLC or LLP) had NYS source gross income of less than \$1,000,000, the NYS filing fee is not required.

There is no proration of the filing fee if the partnership, LLC, or LLP has a short tax year for federal tax purposes.

Under the new law, Form IT-204-LL must be filed and the annual filing fee due must be paid within 60 days after the last day of the tax year of the partnership, LLC, LLP, or single-member LLC that is a disregarded entity. Prior to the new law, Form IT-204-LL and the annual filing fee

were due within 30 days after the last day of the tax year. Furthermore, no extensions of time to file or pay the tax are allowed.

2012 CHANGES TO NY METROPOLITAN COMMUTER TRANSPORTATION MOBILITY TAX (MCTMT)

Recent New York metropolitan commuter transportation mobility tax (MCTMT) changes will reduce or eliminate the MCTMT for many small businesses and sole proprietors. The MCTMT is a tax imposed on certain employers and self-employed individuals engaging in business within the metropolitan commuter transportation district (MCTD). The MCTD includes the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island), Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

SELF-EMPLOYED INDIVIDUALS

For tax years beginning on or after Jan. 1, 2012, an individual will be subject to the MCTMT only if his or her earnings from self-employment attributable to the MCTD exceed \$50,000 for the tax year. Prior to the amendment, an individual was subject to the tax if his or her earnings from self-employment attributable to the MCTD exceeded \$10,000 for the tax year. The rate of the MCTMT for self-employed individuals (.34%) has not changed.

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EMPLOYERS

Effective for the calendar quarter beginning on April 1, 2012, the quarterly payroll expense threshold that an employer must exceed to make the employer liable for the MCTMT increased from \$2,500 in any calendar quarter to \$312,500 in any calendar quarter. In addition, employers that meet the definition of eligible educational institutions are no longer subject to the MCTMT. The tax law was also amended to add two new lower MCTMT rates for employers. The new rates will apply based on the amount of an employer's payroll expense in a calendar quarter. Previously the MCTMT was imposed at a single rate (.34%) for all employers.

When payroll expenses exceed \$312,500, but not over \$375,000 for a calendar quarter, the tax is .11% of the payroll expense for that quarter. From \$375,000 to \$437,500 of quarterly payroll, the tax rate is .23%. The tax rate imposed on quarterly payroll greater than \$437,500 will be the same as under the old law.

NEW YORK'S MTA PAYROLL TAX RULED UNCONSTITUTIONAL

On August 22, 2012, a Nassau County Supreme Court decision found the MCTMT, which imposes a 34 cent tariff on every \$100 that employers pay toward salaries, to be unconstitutional. Since this litigation is not concluded, taxpayers who have been paying this tax should continue to pay and file returns.

NYC COMMERCIAL RENT TAX

WHO IS SUBJECT TO THIS TAX?

NYC generally imposes a Commercial Rent Tax on every business tenant, lessee, sub-lessee, licensee or concessionaire (together, "tenants") whose annual base rent for a tax year is greater than or equal to \$250,000 with respect to any "taxable premises," subject to certain exceptions. For these purposes, a taxable premise generally includes any premise used or intended to be used or occupied for carrying on or exercising any trade, business, profession, vocation, or commercial activity. For example, a taxable premise may include a department in a department store (e.g., a florist, beauty parlor, optometrist, and any other commercial property), a parking lot or garage, and office space. However, certain tenants are generally exempt from this Tax including, but not limited to: (i) religious, educational or charitable organizations; (ii) tenants in the World Trade Center Area, and (iii) tenants of taxable premises located in Manhattan north of 96th street or in the Bronx, Brooklyn, Queens, and Staten Island.

TAX RETURN FILING INFORMATION AND EFFECTIVE TAX RATE

For purposes of the Commercial Rent Tax, the tax year begins June 1 and ends May 31 of the following calendar year. Tenants subject to the Tax must generally file quarterly returns and pay the tax due within 20 days of the end of the following periods: (1) June 1 to August 31, (2) September 1 to November 30, and (3) December 1 to February 28. An annual return must also be filed by every tenant on or before June 20 for the tax year ending on May 31.

The statutory tax rate is 6% of the base rent paid by tenants of the premises that are used to conduct any business, profession, or commercial activity. A 35% base rent reduction reduces the effective tax rate to 3.9%.

We can help you understand the effect these possible increases could have on your unique tax situation and create strategies to minimize the impact. Contact RotenbergMeril today at cpas@rmsbg.com.