



# TaxNewsFlash

United States



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## New York State: Changes to metropolitan commuter transportation mobility tax self-employment tax

New York State's recent budget bill ([S. 4009](#)) included a measure under which "active" limited partners will be treated as general partners who have IRC section 1402(a) net earnings from self-employment for purposes of the metropolitan commuter transportation mobility tax (MCTMT). Under the measure, an individual is not considered a limited partner if the individual engages in activities (e.g., control, management, or operation of the partnership) such that the individual is not considered a passive investor. The passive versus active distinction is based on the partner's facts and circumstances, and the bill does not provide guidelines for evaluating this distinction. The extension of the MCTMT to "active" limited partners took effect on May 3, 2023, when the bill was passed.

Another recent New York State bill ([S. 4008](#)) increases the MCTMT for payroll expenses above \$437,500 for employers that do business in the Bronx, Kings, New York, Queens, and Richmond Counties (the five New York City counties) from 0.34% to 0.6% as of July 1, 2023. The bill also increases the MCTMT on self-employment income of individuals earning at least \$50,000 of such income sourced to the five NYC counties to 0.47% retroactive to January 1, 2023, and then to 0.6% as of January 1, 2024.

### Overview of MCTMT self-employment tax

There are two components of the MCTMT:

- The self-employment tax component is imposed on resident and nonresident partners, who can allocate (i.e., apportion) their MCTMT base. The responsibility for tax compliance and payment of the MCTMT ultimately falls on the partner, but the partnership is required to make estimated tax payments of the MCTMT on behalf of nonresident partners (Forms IT-2658 and IT-2658-MTA), unless certain exceptions apply including for nonresident partners joining a Form IT-203GR group (composite) return and for a nonresident partner that provides a Form IT-2658-E waiver certificate to the partnership.

- A direct tax is imposed on employers for each employee's IRC gross wages to the extent the employee is located in the MCTMT region. This component of the tax cannot be passed along to the employees.

Nonresident partners are subject to the IT-203 individual (personal) income tax to the extent they have New York State (NYS) source income, whether based in a New York City (NYC) office or not. The same is true for the MCTMT, with the partnership computing a metropolitan commuter transportation district (MCTD) allocation percentage based on the same sourcing allocation rules set forth for the IT-203 individual (personal) income tax. This approach for the MCTMT has remained consistent since it was enacted in 2009.

For example, if a Texas partner has NYS source income due to the partnership's NYS activities and files an IT-203 return, then the Texas partner will have to pay MCTMT to the extent the partnership has MCTD sourced income. Note, the Texas partner will owe MCTMT to the extent there is MCTD income allocated to the five NYC counties now using a higher rate based on S. 4008.

The MCTMT base for a partner is determined by reference to IRC section 1402(a) net earnings from self-employment and is not tied to partnership income or loss. See [Publication 420](#) [PDF 253 KB], which provides a summary of the MCTMT base for partners.

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