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New York Court strikes down Metropolitan Transportation Authority payroll tax

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In brief

Update. On June 26, 2013, the Supreme Court, Appellate Division, overturned this decision. [View the opinion.](#)

The 10th District of the New York State Supreme Court, located in Nassau County east of New York City, struck down the state's Metropolitan Transportation Authority payroll mobility tax on the basis that it violated home-rule provisions contained in the state's Constitution. [*Mangano et al., v. Silver, et al.*, New York Supreme Court, Part 4, #1444/10, 8/22/12]

In a six-page decision, Supreme Court Justice R. Bruce Cozzens Jr. ruled in favor of a coalition of municipal governments, including Nassau, Suffolk and Westchester counties, on the basis that the payroll mobility tax violated a clause in the New York State Constitution barring the state from passing special laws affecting individual municipalities if such laws have not also been approved by local legislative bodies. The ruling also struck down a variety of other fees that had been created as part of the MTA's fiscal bailout, including surcharges on vehicle registrations, taxi rides, car rentals and driver's license applications.



In detail

Passed in 2009 in order to address a budgetary shortfall of the metropolitan transportation authority, a payroll mobility tax—a source of funding for New York subways, buses, and regional rail service—was levied on the total payroll of certain businesses and self-employed individuals within the Metropolitan Commuter Transportation District (MCTD), which includes all of New York City, as well as several surrounding counties. As enacted, the tax required an employer to pay tax on 0.34 percent of the payroll expense, meaning wages and compensation, paid to employees that are employed within the MCTD. Also imposed was a 0.34 percent tax on the net earnings from self-employment of individuals that were attributable to the MCTD if such earnings exceeded \$10,000 for the tax year. From its inception, the payroll mobility tax has been a source of controversy, particularly among communities outlying New York City, which charge that the tax unfairly burdens them with the cost of sustaining transit that primarily serves the city and other suburbs.

Outcome surprised many

Four previous constitutional challenges to the law were unsuccessful. The 10th District's decision was, therefore, somewhat unexpected. Not surprising, however, was that the MTA, which estimates that \$1.8 billion, or 15% of its funding revenues, will disappear if the ruling stands, does not intend to roll over. MTA representatives have already indicated that the agency will appeal directly to the New York State Court of Appeals—the state's highest court.

Governor Cuomo also expressed dissatisfaction with the ruling. Speaking to reporters during an appearance in Syracuse, Governor Cuomo expressed his belief that the ruling would be overturned. "We believe the ruling is wrong and we believe the ruling is going to be reversed," he said. Nevertheless, the plaintiffs did not contend that the MTA's services were unnecessary, only that the tax was improperly imposed on outlying communities. Justice Cozzens agreed, and was unequivocal in the decision, stating:

The MTA payroll tax is a special law, which does not serve a substantial state interest. This law should have been, according to the State Constitution, passed with either a Home Rule message or by message of necessity with two-thirds vote in each house. This did not occur, therefore this law was passed unconstitutionally.

Actions to think about

- Despite the decision, New York State has indicated that it plans to continue collecting the payroll tax pending the appeal. Justice Cozzens' decision did not order the state to cease collections and, as noted above, conflicts with four other rulings that upheld the tax, requiring that the issue be resolved by the appellate courts. The payroll tax was only recently enacted; thus, there is still time within the statute of limitations to seek a refund. At this time, therefore, we do not advise that any clients refrain from remitting the payroll tax.
- The Department of Taxation and Finance has cautioned taxpayers not to file amended returns as a result of this court decision. Rather, the Department is

developing a process for taxpayers to file protective claims that should be available in October.

- Nassau County Executive Edward Mangano, who led the plaintiffs in this suit originally filed in 2010, indicated that his administration is studying whether it can retroactively get tax back from the MTA on behalf of businesses that have paid them—which have totaled nearly \$10 million since 2009.
- The MTA has warned that it may increase fares and reduce transportation services in the wake of the decision.

Let's talk

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