



Fund Managers Beware:

Active 'Limited Partners'
now subject to NY Metro
Commuter Transportation Tax

There is a significant change to the New York State Metropolitan Commuter Transportation Mobility Tax (MCTMT) under which limited partner members of fund management companies may now be subject to the tax. It is critical for fund managers to assess the impact of this change – the rule is effective immediately and action may be required.

The change, part of legislation included in New York State's Fiscal 2023-2024 Budget, prevents limited partners that are active in the operations of funds, or other businesses structured as limited partnerships, from claiming limited partner status for purposes of avoiding the MCTMT.



How Does the MCTMT Apply to Fund Managers?

The MCTMT is imposed on certain employers and self-employed individuals engaging in business within the Metropolitan Commuter Transportation District. The district includes the counties of New York, Bronx, Kings, Queens, Richmond, Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester. The MCTMT applies to employers paying wages to employees in the district and to self-employed individuals (including partners) with more than \$50,000 of net earnings from sources within the district.

Many fund management companies employ a limited partnership structure, where the management company has a general partner that is formed as an LLC, which typically owns 1% of the management company. Funds with this structure often take the position that only the 1% general partner is subject to Federal self-employment tax, as well as the MCTMT tax, on its share of the management company's net earnings, and the limited partners are exempt under Internal Revenue Code Section 1402(a)(13).

Changes to the MCTMT

As previously reported, New York State's [Fiscal 2023-2024 Budget](#) included legislation that amends the definition of the term "net earnings from self-employment" for applying the MCTMT. The NYS Department of Taxation and Finance has asserted during audits that the formal title of "limited partner" does not shield individuals from the tax. The Budget codifies the Department's position, providing that the Department will not consider an individual a limited partner for MCTMT purposes if the individual directly or indirectly takes part in the control of, or participates in, the management or operations of the partnership such that the individual is not a passive investor, despite the individual's title or characterization in the partnership or operating agreement. This provision is effective immediately.

The legislation also increases the top MCTMT rate from 0.34% to 0.47% for self-employment income sourced to New York City, effective July 1, 2023. The top rate rises to .60% in 2024.

Implications for Fund Managers

This change is significant because, for purposes of the NYS MCTMT, the definition of self-employment income is no longer tied to the Federal definition under IRC Section 1402(a)(13). Therefore, the tax could apply to limited partner members of fund management companies that are active in the trading or operations of the fund complex. Fund managers should assess their liability for the MCTMT under the new rule, especially since given the immediate effective date, estimated tax payments may be required.

Note that this change is not expected to impact the treatment of carried interest allocations from a fund, whether earned by the management company or by a General Partner entity that is separate from the management company, which is common for partnerships that are subject to NYC's Unincorporated Business Tax.

A photograph of an elderly man with a long, full white beard and glasses, wearing a dark blue jacket over a light blue shirt. He is looking down at a smartphone in his hands. The background is a blurred subway tunnel with tracks and a train in the distance.

**People who know
Asset Management, know BDO.**
www.bdo.com/asset-management

At BDO, our purpose is helping people thrive, every day. Together, we are focused on delivering exceptional and sustainable outcomes — for our people, our clients and our communities. Across the U.S., and in over 160 countries through our global organization, BDO professionals provide assurance, tax and advisory services for a diverse range of clients.

BDO is the brand name for the BDO network and for each of the BDO Member Firms. BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. www.bdo.com

Material discussed in this publication is meant to provide general information and should not be acted on without professional advice tailored to your needs.

© 2023 BDO USA, LLP. All rights reserved.