New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91(3.1)I
Income Tax
October 21, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

MODIFIED ADVISORY OPINIONS PETITION NO. I910118A
PETITION NO. I930210A
PETITION NO. I930722A
PETITION NO. I960620A

Advisory Opinions were issued to Metro-North Commuter Railroad Company, 347 Madison Avenue, 19th Floor, New York, New York 10017, on March 18, 1991 with respect to Petition No. I9101118A, TSB-A-91(3)I; April 28, 1993 with respect to Petition No. I930210A, TSB-A-93(3)I; October 19, 1993 with respect to Petition No. I930722A, TSB-A-93(11)I; and December 17, 1996 with respect to Petition No. I960620A, TSB-A-96(5)I.

The issue raised by Petitioner, Metro-North Commuter Railroad Company, is how the application of the Amtrak Reauthorization and Improvement Act of 1990, PL 101-322 ("ARIA"), affects employees traveling to more than one state during the course of their employment. Specifically, the meaning of the term "regularly assigned" and the types of occupations and work schedules covered by ARIA are at issue.

After a current review of the application of the ARIA, such Advisory Opinions are modified to the extent discussed herein, for taxable years beginning on or after January 1, 2000.

Discussion

ARIA amended various provisions of Title 49 of the United States Code relating to state and local taxation of compensation paid to employees of interstate rail carriers, interstate motor carriers and interstate motor private carriers and applies to compensation paid on or after July 6, 1990.

Section seven of ARIA amended section 11504(a) of Title 49 of the United States Code (49 USC § 11504(a)) with regard to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of Chapter 105 of Title 49. The Interstate Commerce Commission was abolished by Federal Public Law 104-88, the ICC Termination Act of 1995, effective January 1, 1996. The provisions of former 49 USC § 11504(a) are now contained in section 11502(a) of Title 49 of the United States Code (49 USC § 11502(a)). 49 USC § 11502(a) states, in pertinent part, that:

> No part of the compensation paid by a rail carrier ... to an employee <u>who performs regularly assigned duties as such an employee on a railroad in more than one State</u> shall be subject to the <u>income tax laws</u> of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.... (emphasis added)

Prior to ARIA, 49 USC § 11504(a) provided a much more limited exemption for railroad ***employers***, from the duty to ***withhold*** income tax on the compensation of certain of their employees. This provision was limited to employer relief from the multi-state burden; it ***did not*** exempt the employees from the burden of multi-state income taxation.

While it is plain that ARIA greatly expanded the reach of the exemption, from employer withholding to employee taxation, it is not so clear whether or how the employee population covered by the exemption was intended to change. The pre-ARIA exemption applied to an employee who-

> (A) performs regularly assigned duties on a locomotive, car or other track-borne vehicle in at least 2 States ...; or
>
> (B) is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks from railroad terminals in at least 2 States....

This exemption language was cast in 2 separate clauses. The (A) clause applied to employees who work on a locomotive or car, e.g. the engineers and conductors who ride the train. The term *regularly assigned* in this clause has the meaning which relates to their kind of work, where the normal tour of duty on the train will cross state lines. On the other hand, the (B) clause applies to roadway maintenance workers. These workers are assigned to a specific roadway which crosses state lines, but they will work in any given state on the roadway on an as-needed basis.

The ARIA exemption is a single clause cast in terms of "an employee who performs regularly assigned duties as such an employee on a railroad in more than one State ...." It is the Department's position that this exemption telescopes the former (A) and (B) clauses into one. The ARIA exemption clause refers only to employees *regularly assigned*. In the ARIA clause, these employees must be regularly assigned *on a railroad*, which is interpreted to be shorthand for the pre-ARIA phrases of *on a locomotive, car, or other track-borne vehicle*, and *in maintaining roadways, signals, communications, and structures* of the railroad.

It is the Department's position that the correct reading of the ARIA exemption applies only to the pre-ARIA clause (A) employees, e.g., engineers and conductors, and the former (B) clause roadbed employees. However, the exemption does not apply to all the other kinds of employees of the railroad, for the following reasons:

- As a matter of statutory construction, the relevant phrase in the ARIA exemption refers to an employee who performs regularly assigned duties *on a railroad*. The Department interprets this construction to mean *on the train*, and, *on the roadbed*, but not to cover the universe of employees of the railroad company. If Congress had intended an expansive meaning, the phrase *on a railroad* would not have been necessary.

- There is nothing in either the legislative history nor in the statutory precursor to the ARIA exemption to suggest such an expansive reading to include the universe of employees.

- Unlike conductors and engineers and the track maintenance employees, for whom crossing state lines would pose regular exposure to State taxation, there is nothing unique about other kinds of employment for a railroad that distinguishes it from employment in any other commercial endeavor. Accordingly, there is nothing that would invite the protection of a federal prohibition against state taxation.

Conclusion

With respect to Metro-North, the ARIA exemption phrase *an employee who performs regularly assigned duties as an employee on a railroad in more than one State*, is applied as follows:

- Metro-North positions working on a locomotive, car or other track-borne vehicle, e.g., engineers and conductors, which we understand are categorized as "train and engine" positions, are positions that are regularly assigned duties on a railroad. Of these positions, only those positions on the New Haven line (the only line that traverses a state line) are positions that are regularly assigned in more than one state. Accordingly, only train and engine positions on the New Haven line are included in the ARIA exemption. Engineers and conductors assigned to other lines who travel the New Haven line only occasionally, such as for the "familiarization" trip described in the Advisory Opinions, are not included in the ARIA exemption.

- The ARIA exemption applies to the position of an employee. For example, if an employee holds an engineer job posting for 11 months on the Hudson line and then switches to an engineer posting for 6 months on the New Haven line, only the New Haven posting is exempt.

- Metro-North track positions described as "other than train and engine" and categorized as "Maintenance of Way", which comprise track maintenance employees, are also positions that are regularly assigned duties on a railroad. Of these positions, only those positions on the New Haven line are positions that are regularly assigned in more than one state. Accordingly, only "Maintenance of Way" positions on the New Haven line are included in the ARIA exemption. "Maintenance of Way" positions on the other Metro-North lines are not included in the ARIA exemption.

- As to all other Metro-North positions, there is no ARIA exemption. These include all other positions described as "other than train and engine".

DATED: October 21, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.