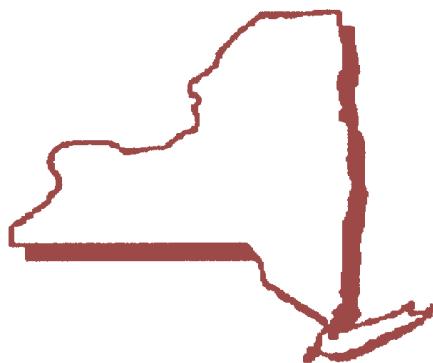


# GENERAL TAX INFORMATION FOR NEW YORK STATE NONRESIDENTS AND PART-YEAR RESIDENTS

For tax year 2010



The information presented is current as of this publication's print date. Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov) for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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## New for tax year 2010

The definition of New York source income of a nonresident has been amended as part of the 2010-2011 New York State budget (Chapter 57 of the Laws of 2010).

- Income, gain, loss, and deduction from New York sources includes income received by a nonresident that is includable in federal adjusted gross income that is related to a business, trade, profession, or occupation previously carried on within the state, whether or not as an employee. This income includes, but is not limited to, income related to covenants not to compete and income related to termination agreements.

This amendment applies to income received in tax years beginning on or after January 1, 2010, even if the income is attributable to a contract or other agreement entered into before 2010.

- Effective for tax years beginning on or after January 1, 2007, if a nonresident is a shareholder in an S corporation that has made the election to be a New York S corporation, and the S corporation has distributed an installment obligation under IRC section 453(h)(1)(A) to the shareholders, any gain recognized on the receipt of payments from the installment obligation for federal income tax purposes will be treated as New York source income.

The amount of the gain to be included in New York source income is determined using the applicable allocation percentage under Article 9-A (Business Corporations) or Article 32 (Banking Corporations) of the New York State Tax Law in effect for the year the assets were sold. This amendment applies to tax years beginning on or after January 1, 2007. However, it also applies to any other tax year where the statute of limitations for issuing an assessment remains open.

- Effective for tax years beginning on or after January 1, 2007, if a nonresident is a shareholder in an S corporation that has made the election to be a New York S corporation, and the S corporation has made an election under IRC section 338(h)(10), then any gain recognized on the deemed asset sale for federal income tax purposes will be treated as New York source income. The amount of the gain to be included in New York source income is determined using the applicable allocation percentage under Article 9-A or Article 32 of the New York State Tax Law in effect for the year that the section 338(h)(10) election was made. This amendment applies to tax years beginning on or after January 1, 2007. However, it also applies to any other tax year where the statute of limitations for issuing an assessment remains open.

In addition, when a nonresident shareholder exchanges his or her S corporation stock as part of the deemed liquidation, the new law provides that any gain or loss recognized on the stock sale for federal income purposes will be treated as the disposition of an intangible asset for New York State purposes and will not increase or offset any gain recognized on the deemed asset sale as a result of the section 338(h)(10) election. Therefore, the gain or loss from the deemed liquidation of S corporation stock is not included in New York source income.

- If a nonresident is a shareholder in an S corporation that has made the election to be a New York S corporation, and that S corporation terminates its taxable status in New York, any income or gain recognized on the receipt of payments from an installment sale contract entered into when the S corporation was subject to tax in New York will be treated as New York source income.

The amount of the gain to be included in New York source income is determined using the applicable allocation percentage under Article 9-A or Article 32 of the New York State Tax Law in effect for the year that the S corporation sold the assets that gave rise to the installment sale contract. This amendment is applicable to installment payments received in taxable years beginning on or after January 1, 2010, even if the payments are attributable to an installment sale contract entered into prior to 2010.

For more information, see TSB-M-10(9)I, *Income Received by a Nonresident Related to a Business, Trade, Profession, or Occupation Previously Carried on Within New York State*, and TSB-M-10(10)I, *Amendments to the Treatment of Certain S Corporation Income by Nonresident Taxpayers*.

## Introduction

This publication provides general information for taxpayers who are required to file a New York State nonresident or part-year resident income tax return. If you were a nonresident of New York State and received income during the tax year from New York State sources, or if you moved into or out of New York State during the tax year (part-year resident), you must file Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. You are subject to New York State tax on income you received from New York sources while you were a nonresident and all income you received while you were a New York State resident.

You may have to pay income tax as a resident even if you are not considered a resident for other purposes. For income tax purposes, your resident status depends on where you were domiciled and where you maintained a permanent place of abode during the tax year.

You may report the amount of New York State and local sales and use taxes that you owe, if any, on your personal income tax return. For information on filing and paying sales and use taxes, see *Sales or use tax* on page 35.

For federal tax information, visit the Internal Revenue Service (IRS) Web site ([www.irs.gov](http://www.irs.gov)).

## Definitions

The following definitions are applicable in determining whether or not you were a New York State nonresident for income tax purposes.

### Domicile

In general, your *domicile* is the place you intend to have as your permanent home. Your domicile is, in effect, where your permanent home is located. It is the place you intend to return to after being away (as on vacation abroad, business assignments, educational leave, or military assignment).

**You can have only one domicile.** Your New York domicile does not change until you can demonstrate that you have abandoned your New York domicile and established a new domicile outside New York State.

A change of domicile must be *clear and convincing*. Easily controlled factors such as where you vote, where your driver's license and registration are issued, or where your will is located are **not** primary factors in establishing domicile. To determine whether you have, in fact, changed your domicile, you should compare:

- the size, value, and nature of use of your first residence to the size, value, and nature of use of your newly acquired residence;
- your employment and/or business connections in both locations;
- the amount of time spent in both locations;
- the physical location of items that have significant sentimental value to you in both locations; and
- your close family ties in both locations.

A change of domicile is clear and convincing only when your primary ties are clearly **greater** in the new location. When weighing your primary ties, keep in mind that some ties may weigh more heavily than others depending on your overall lifestyle. If required by the Tax Department, it is your responsibility to produce documentation showing the necessary intention to effect a change of domicile.

If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), for work, school, or any other purpose, your domicile does not change.

If your domicile is New York State and you go to a foreign country because of a business assignment by your employer, or for study, research, or any other purpose, your domicile does not change unless you show that you definitely do not intend to return to New York State.

**Permanent place of abode**

In general, a *permanent place of abode* is a residence (a building or structure where a person can live) you permanently maintain, whether you own it or not and usually includes a residence your husband or wife owns or leases.

**Resident status for income tax purposes**

Generally, if your domicile is not New York State you are considered a New York State nonresident. However, you are a New York State resident for income tax purposes if your domicile is not New York State, but you maintain a permanent place of abode in New York State for more than 11 months of the year and spend **184 days or more** (any part of a day is a day for this purpose) in New York State during the tax year. If you are considered to be a resident of New York State for income tax purposes, you must file a resident income tax return using either Form IT-150, *Resident Income Tax Return (short form)*, or Form IT-201, *Resident Income Tax Return (long form)*.

However, even if your domicile is New York State, you are not a resident if you meet **all three** conditions in either Group A or Group B as follows:

**Group A**

1. You did not maintain any permanent place of abode in New York State during the tax year; and
2. You maintained a permanent place of abode outside New York State during the entire tax year; and
3. You spent 30 days or less (a part of a day is a day for this purpose) in New York State during the tax year.

**Group B**

1. You were in a foreign country for at least 450 days during any period of 548 consecutive days; and
2. You, your spouse (unless legally separated), and minor children spent 90 days or less in New York State during this 548-day period; and
3. During the nonresident portion of the tax year in which the 548-day period begins, and during the nonresident portion of the tax year in which the 548-day period ends, you were present in New York State

for no more than the number of days that bears the same ratio to 90 as the number of days in such portion of the tax year bears to 548. The following formula illustrates this condition:

<b>Number of days in the <u>nonresident portion</u></b> 548	<b>x 90 =</b>	<b>Maximum days allowed in New York State</b>
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**Note:** For purposes of determining your resident status for income tax purposes, your presence in New York does not count as a day or part of a day for purposes of determining your total days in New York, if any of the following apply:

1. You travel to New York for the sole purpose of boarding a plane, ship, train, or bus for a destination outside New York State.
2. You are continuing travel that began outside of New York State that takes you through the state by automobile, plane, ship, train, or bus, to a destination outside New York State.
3. You are seeking treatment for an illness at a New York State medical facility or are confined to a New York State nursing home facility.

Additionally, if you are a member of the armed forces on assignment in New York State, and your domicile is not New York State, you are not a resident. If you are a military spouse domiciled in another state, but located in New York State solely to be with your spouse (who is a member of the armed services present in New York State in compliance with military orders), you are not considered a resident. For more information, see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*.

You are a New York State nonresident if you were not a resident of New York State for any part of the year. You are a New York State part-year resident if you meet the definition of resident or nonresident for only part of the year.

## Filing requirements for New York State nonresidents and part-year residents

You must file Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, if you meet any of the following conditions:

- You have income from a New York source and your New York adjusted gross income is more than your New York State standard deduction. (See *New York source income - nonresidents* starting on page 12, *New York source income – part-year residents* starting on page 16, and *Itemized deduction or standard deduction* on page 20.)
- You want to claim a refund of any New York State, New York City, or Yonkers income taxes withheld from your pay.

- You want to claim any of the New York State, New York City (except for the New York City school tax credit), or Yonkers refundable or carryover income tax credits (see *New York State and New York City income tax credits* on page 21).
- You are subject to the minimum income tax on tax preference items derived from or connected with New York sources.
- You were a part-year resident and you are subject to a separate tax on lump-sum distributions for your resident period derived from or connected with New York sources.
- You incurred a net operating loss (NOL) for New York State personal income tax purposes for the tax year, without incurring a similar NOL for federal income tax purposes.

For more information on these filing requirements, see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

**New York City or  
Yonkers change of  
residence**

If you changed your New York City or Yonkers resident status during the year, you must complete Form IT-360.1, *Change of City Resident Status*, and pay New York City resident tax or Yonkers resident tax surcharge for the part of the year that you lived in New York City or Yonkers. File Form IT-360.1 with your Form IT-203. For more information, see the instructions for Form IT-360.1.

**Yonkers nonresident  
earnings tax**

If you were not a Yonkers resident, but earned wages or carried on a trade or business in Yonkers, you are subject to the Yonkers nonresident earnings tax. You must compute your Yonkers nonresident earnings tax on Form Y-203, *Yonkers Nonresident Earnings Tax Return*. If you are married, you cannot file jointly on Form Y-203. If you and your spouse each have separate taxable Yonkers earnings, you must each complete a separate Form Y-203 and attach it to your Form IT-203.

**Joint and separate  
returns for  
married taxpayers**

If you are married and filing a joint federal income tax return and one spouse is a New York State resident and the other is a nonresident or part-year resident, you are required to file separate New York State returns. The resident spouse must use Form IT-150, *Resident Income Tax Return* (short form), or Form IT-201, *Resident Income Tax Return* (long form). The nonresident or part-year resident spouse, if required to file a New York State return, must use Form IT-203. However, if you choose to file a joint New York State tax return, both spouses' income will be taxed as full-year residents of New York State.

If you file a joint federal return and:

- both spouses are nonresidents and both have New York source income, **or**
- one spouse is a part-year resident and the other is a nonresident with New York source income, **or**
- both spouses are part-year residents,

you must file a joint New York State return using *Married filing joint return* as your filing status. Both spouses must sign the return and will generally be jointly and severally (individually) liable for the entire tax, penalty, or interest due.

**Exception:** If you meet one of the preceding three conditions but are unable to file a joint New York State return because the address or whereabouts of your spouse is unknown, or your spouse refuses to sign a joint New York State return, you **may** be eligible to file a separate New York State return using *Married filing separate return* as your filing status. For more information, see the instructions for Form IT-203.

If you file a joint federal return and:

- both spouses are nonresidents but only one has New York source income, **or**
- one spouse is a part-year resident and the other is a nonresident with no New York source income, you must file a joint New York State return using *Married filing joint return* as your filing status and include in the *Federal amount* column of Form IT-203 the joint income as reported on your federal income tax return. However, only the spouse with the New York source income should sign Form IT-203. The spouse that is required to sign Form IT-203 must also complete Form IT-203-C, *Nonresident or Part-Year Resident Spouse's Certification*, and attach it to the front of Form IT-203. In this case, any refund or notice of tax, penalty, or interest due will be issued only in the name of the spouse required to sign Form IT-203.

## Income tax treatment of nonresidents and part-year residents

If you are a nonresident of New York State, you are subject to New York State tax on income you received from New York sources in 2010. If you were a resident for only part of 2010, you are subject to New York State tax on all income you received while you were a resident of the state and on income you received from New York sources while you were a nonresident.

To compute the amount of tax due, use Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. You will compute a base tax as if you were a full-year resident, then determine the percentage of your income

## New York source income – nonresidents

that is subject to New York State tax and the amount of tax apportioned to New York State.

The *New York source income of a nonresident* is the sum (with adjustments for special accruals, see *Special accruals* on page 16) of income, gain, loss, and deduction from:

- real or tangible personal property located in New York State (including certain gains or losses from the sale or exchange of an interest in an entity that owns real property in New York State);
- services performed in New York State;
- a business, trade, profession, or occupation carried on in New York State;
- income attributable to a business, trade, profession, or occupation previously carried on in New York State;
- certain S corporation gains from acquisition, liquidation, and installment sales of assets to the extent that the business was conducted in New York State; and
- a New York S corporation in which you are a shareholder.

New York source income also includes:

- your distributive share of New York State partnership income or gain;
- your share of New York State estate or trust income or gain;
- lottery winnings won in the New York State lottery, if the prize was won on or after October 1, 2000, and the total proceeds of the prize are more than \$5,000; and
- any gain from the sale, transfer, or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold when the real property comprising the units of such cooperative housing corporation is located in New York State.

*New York source income of a nonresident does not include* the following income even if it was included in your federal adjusted gross income:

- Income from pension plans described in section 114 of Title 4 of the U.S. Code. The plans described in section 114 of Title 4 of the U.S. Code are as follows:

- A qualified trust under section 401(a) of the IRC that is exempt from taxation under section 501(a) of the IRC. These qualified plans are the regular type of plans maintained by employers to provide retirement benefits to employees. They include both defined contribution and defined benefit plans.

In addition to regular employee plans, also included in this category are Keogh (HR-10) plans for self-employed persons and section 401(k) deferred compensation plans.

- A simplified employee pension (SEP) defined in section 408(k) of the IRC. These are plans under which employers, including self-employed individuals, contribute to Individual Retirement Accounts on behalf of their employees.
  - An annuity plan described in section 403(a) of the IRC. These plans are basically the equivalent of *qualified plans*, but they are funded by annuity contracts.
  - An annuity contract described in section 403(b) of the IRC. These are tax sheltered annuities which utilize insurance contracts to fund a special type of pension arrangement available only to employees of public educational organizations (such as public schools) and certain other tax exempt organizations.
  - An individual retirement plan described in section 7701(a)(37) of the IRC. These plans are Individual Retirement Accounts (IRAs), including Roth IRAs.
  - An eligible deferred compensation plan as defined in section 457 of the IRC. These are plans set up by state and local governments and any other tax exempt organizations which permit employees, subject to certain limits, to contribute pre-tax dollars to the plans.
  - A governmental plan as defined in section 414(d) of the IRC. These are plans established for its employees by the government of the United States, or a state or political subdivision of a state, or any agency or instrumentality of the United States or any state.
  - A trust described in section 501(c)(18) of the IRC. These are trusts created before June 25, 1959, which are part of a pension plan meeting special requirements and funded only by contributions of employees.

- Any plan, program, or arrangement described in section 3121(v)(2)(C) of the IRC or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner and that is in effect immediately before retirement begins, provided payments under the plan are part of a series of substantially equal periodic payments (which may include income described in the plans above) made for:
  - (a) the life or life expectancy of the recipient (or for the joint lives or joint expectancies of the recipient and the designated beneficiary of the recipient); or
  - (b) a period of not less than 10 years.

However, a plan described above that is created solely to provide retirement benefits to employees that would exceed the benefits that could be provided to employees under a *qualified plan* (commonly referred to as *excess benefit plans*) is not subject to the periodic payment requirements set forth in (a) and (b) previously. These plans will qualify as covered plans regardless of the payout period or the method (lump-sum, etc.) in which the payments are made.

This provision relates to nonqualified deferred compensation arrangements. They are plans that are not recognized as *qualified* under the IRC. These are unlimited, flexible arrangements without contribution limits, funding requirements, or limits on payment provisions. These plans are often unfunded.

The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program or arrangement to fail the *substantially equal periodic payments* test.

For purposes of this section, the term *retired partner* is an individual who is described as a partner in section 7701(a)(2) of the IRC of 1986 and who is retired under such individual's partnership agreement.

- Any retirement or retainer pay of a member or former member of a uniformed service computed under Chapter 71

(Computation of Retired Pay) of Title 10 (Armed Forces) of the United States Code.

- Annuities and pensions that meet the New York State definition of an annuity, unless the annuity is employed in or used as an asset of a business, trade, profession, or occupation carried on in New York State.
- Interest, dividends, or gains from the sale or exchange of intangible personal property, unless they are part of the income you received from carrying on a business, trade, profession, or occupation in New York.
- Gambling winnings, other than lottery winnings won in the New York State lottery as described on page 12, unless you are engaged in the business of gambling and you carry on that business in New York State.
- Compensation you received for active service in the United States military (see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*, for more information).
- Income you earned in New York State as a military spouse if (1) you are a nonresident of New York State, and (2), you are in New York State solely to be with your spouse who is a member of the armed services present in New York State in compliance with military orders (see TSB-M-10(1)I, *Military Spouse Residency Relief Act*, for more information).
- Your income as a shareholder of a corporation that is a New York C corporation.
- Compensation you received from an interstate rail carrier, interstate motor carrier, or an interstate motor private carrier for regularly assigned duties performed in more than one state.
- Compensation you received from an interstate air carrier if 50% or less of the compensation received from the air carrier is earned in New York State.
- Compensation paid to you if (1) you are engaged on a vessel to perform assigned duties in more than one state as a pilot licensed under section 7101 of Title 46, of the United States Code, or (2) you perform regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one state.

## New York source income – part-year residents

If you move into or out of New York State, your move is generally considered a change of resident status if, at the time of your move, you definitely intended to permanently leave your home and establish a new permanent home elsewhere. If you have a change of resident status during the year, you are considered a part-year resident for the year.

For part-year residents *New York source income* is the sum of the following with adjustments for special accruals (see *Special accruals* on page 16):

- all income reported on your federal return for the period you are a resident of New York State; and
- the New York source income for the period you were a nonresident of New York State.

As a New York State part-year resident, you must file Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, for the year during which your status changes.

## Stock options, restricted stock, and stock appreciation rights

If, as a New York State nonresident or part-year resident, you received compensation income attributable to stock options, restricted stock, or stock appreciation rights and the stock options, restricted stock, or stock appreciation rights you received are attributable to services performed in New York State, some or all of the federal income related to the compensation income may be included in New York source income.

For more information, see TSB-M-07(7)I, *New York State Tax Treatment of Stock Options, Restricted Stock, and Stock Appreciation Rights Received by Nonresidents and Part-Year Residents*.

## Special accruals

If you are a New York State resident who becomes a nonresident or a nonresident who becomes a New York State resident, either due to a change in domicile or a change of resident status, you may have to use special accruals to compute your New York State personal income tax.

You must accrue on your New York State part-year or full-year resident return any items of income, gain, loss, or deduction that under an accrual method of accounting would be reportable at the time of the change of residence. You must also accrue to New York State the items of tax preference subject to minimum income tax (Form IT-220, *Minimum Income Tax*) and the total taxable amount of lump-sum distributions subject to the separate tax on lump-sum distributions (Form IT-230, *Separate Tax on Lump-Sum Distributions*). If an individual changes from a New York City resident to a non-resident, these accruals must be made on Form IT-360.1, *Change of City Resident Status*.

If you had a right to receive income without restriction or contingencies at or before the date of the change of residence, this income would be accruable at the time you changed your residence, even if the income is actually received after you move out of New York State. Examples of accruable items of income are:

- the unrealized income from an installment sale made while you were a resident,
- payments that you will receive from a lottery that you won while you were a resident,
- bonuses (if the amount to be received is fixed and determinable at or before the date of the change of residence), and
- severance pay (if the amount to be received is fixed and determinable at or before the date of change of residence).

These rules also apply if you change from a New York City resident to a nonresident. If you were a New York City resident prior to your change of residence, you must continue to pay New York City resident tax on the accruable amounts reported on your future New York State nonresident returns.

***Example:** If an individual sells his business at a gain, under contract whereby the purchase price is to be paid in installments, and later changes his resident status from resident to nonresident, he must accrue on the New York State personal income tax return for the resident period the entire amount of the gain remaining unpaid from the installment obligations, regardless of the method of accounting he normally uses in reporting transactions.*

### Special accruals for full-year nonresidents

If you were a full-year New York State nonresident for 2010, you may have to use special accrual rules to compute your New York State personal income tax for 2010. You are subject to the special accrual rules **only** if you have accrued income for 2010 (see below) **and**:

- you were a resident of New York State on December 31, 2009; or
- you will be a resident of New York State on January 1, 2011.

You have accrued income for 2010 if:

- you have an item of income that was fixed and determinable in a tax year prior to 2010, but you are reporting that income for federal income tax purposes in tax year 2010; **or**

- you have an item of non-New York source income that was fixed and determinable in tax year 2010, but you will be reporting that income for federal income tax purposes in a tax year after 2010.

*Non-New York source income* is income that is **not** attributable to (1) a business, trade, profession, or occupation carried on in New York State, or (2) the ownership of any interest in real or tangible personal property in New York State.

#### **Special accruals for part-year residents**

Your accrued income as an individual **moving out** of New York State is income you earned during your New York resident period but did not receive until after you became a nonresident of New York State.

If you **moved out** of New York State, you must accrue any item of income, gain, loss, or deduction that, under an accrual method of accounting, would be reportable at the time you changed your residence.

Your accrued income as an individual **moving into** New York State is non-New York source income you earned before you became a New York State resident but received (or will receive) after you became a resident.

If you became a New York State resident during the tax year, you must accrue any item of income, gain, loss, or deduction that, under an accrual accounting method would be reportable at the time you changed your residence. However, no accrual is required or allowed for items of income, gain, loss, or deduction derived from or connected with New York State sources.

For any subsequent tax year, any item of income, gain, loss, or deduction accrued up to the time you changed your residence must be excluded in determining your New York source income, New York adjusted gross income, minimum taxable income, or total taxable amount of lump-sum distributions.

#### **Special accruals not required in certain cases**

You are not required to make the special accruals on your New York State income tax return in the year that you change your resident status if:

1. You file a bond or other acceptable security in an amount equal to or greater than the amount of additional New York State income tax that would be due if the accrued items were included on your New York return, and
2. You include the accruable amount(s) as received on your New York nonresident return for subsequent tax years as if no change of resident status occurred (sections 639(d), 639(h), 1307(c), and 1307(f) of the Tax Law).

For more information, see Form IT-260, *New York State and New York City Surety Bond Form - Change of Resident Status - Special Accruals*, Form IT-260.1, *Change of Resident Status - Special Accruals*, and the instructions for Forms IT-260 and IT-260.1.

## **Days worked at home**

It is the Tax Department's position that if your assigned or primary office is in New York State, any normal work day spent working at your home will be treated as a day worked outside the state **if** your home office is a bona fide employer office (see below). Any day spent at the home office that is not a normal workday would be considered a nonworking day.

A normal workday means any day that you performed the usual duties of your job. For this purpose, responding to occasional phone calls or e-mails, reading professional journals or being available if needed does not constitute performing the usual duties of your job.

## **Bona fide employer office**

Use the factors below to determine if your home office constitutes a bona fide employer office. The factors are divided into three categories: the primary factor, secondary factors, and other factors. In order for an office to be considered a bona fide employer office, the office must meet either:

- a) the primary factor, or
- b) at least four of the secondary factors and three of the other factors.

**Primary factor –** Your home office contains or is near specialized facilities.

### **Secondary factors:**

1. Your home office is a requirement or condition of employment.
2. Your employer has a bona fide business purpose for the employee's home office location.
3. You perform some of the core duties of your employment at your home office.
4. You meet or deal with clients, patients, or customers on a regular and continuous basis at your home office.
5. Your employer does not provide you with designated office space or other regular work accommodations at one of its regular places of business.
6. Your employer reimburses your expenses for your home office.

**Other factors:**

1. Your employer maintains a separate telephone line and listing for your home office.
2. Your home office address and phone number is listed on the business letterhead and/or business cards of your employer.
3. You use a specific area of your home exclusively to conduct the business of your employer that is separate from your living area. Your home office will not meet this factor if the area is used for both business and personal purposes.
4. Your employer's business is selling products at wholesale or retail and you keep an inventory of the products or product samples in your home for use in your employer's business.
5. Business records of your employer are stored at your home office.
6. Your home office has a sign indicating it is a place of business of your employer.
7. Advertising for your employer shows your home office as one of your employer's places of business.
8. Your home office is covered by a business insurance policy or by a business rider to your homeowner's insurance policy.
9. You are entitled to and actually claim a deduction for home office expenses for federal income tax purposes.
10. You are not an officer of the company.

For more information, see TSB-M-06(5)I, *New York Tax Treatment of Nonresidents and Part-Year Residents Application of the Convenience of the Employer Test to Telecommuters and Others*.

**Itemized deduction or standard deduction**

You may pay less tax if you can itemize your deductions, because, unlike the standard deduction, your itemized deduction is not limited to any specific dollar amount. However, you can itemize your deductions only if you itemized deductions on your federal Form 1040.

The starting point in computing your New York itemized deduction amount is your federal itemized deductions from federal Schedule A, *Itemized Deductions*. However, differences between federal and New York State tax laws make it necessary to make certain adjustments to your federal itemized deductions in computing your New York State itemized deduction. So, even though you itemized on federal Form 1040, it is possible that your tax

will be less if you claim the standard deduction on your New York State return. See the instructions for Form IT-203 to determine which deduction to claim.

The standard deduction is a fixed amount, based on your filing status, that reduces your New York adjusted gross income. If you do not itemize your deductions, you can take the standard deduction. The New York standard deduction for tax year 2010 is:

• Single and can be claimed as a dependent	\$ 3,000
• Single and cannot be claimed as a dependent	\$ 7,500
• Married filing joint return	\$15,000
• Married filing separate return	\$ 7,500
• Head of household	\$10,500
• Qualified widow(er)	\$15,000

If you are married and filing separate returns, both spouses must take the standard deduction unless both of you itemized deductions on your federal returns and both of you elected to itemize deductions on your New York State returns.

## New York State and New York City income tax credits

You may be able to reduce your income tax liability by claiming certain tax credits. Although the New York State Tax Law conforms generally to the federal tax law, New York State tax credits are different from federal credits. New York State nonresident and part-year resident taxpayers may claim only those credits that are specifically allowed by the New York State and New York City personal income tax laws.

To claim the following New York State or New York City income tax credits, you must complete the appropriate credit claim form (if applicable) and attach the credit claim form to your New York State return:

- Accumulation distribution credit;
- Alternative fuels credit;
- Automated external defibrillator credit;
- Biofuel production credit;
- Brownfield credits (brownfield redevelopment tax credit, remediated brownfield credit for real property taxes, and environmental remediation insurance credit);

- Claim of right credit (New York State, New York City, and Yonkers);
- Clean heating fuel credit
- Conservation easement tax credit;
- Credit against separate tax on lump-sum distributions;
- Credit for New York City unincorporated business tax;
- Empire State child credit;
- Empire State commercial production credit;
- Empire State film production credit;
- Empire State film post-production credit;
- Empire Zone (EZ) credits (EZ capital tax credit, EZ wage tax credit, EZ investment tax credit and EZ investment tax credit for the financial services industry, EZ employment incentive credit, and EZ employment incentive credit for the financial services industry);
- Employment of persons with disabilities credit;
- Employment incentive credit and employment incentive credit for the financial services industry;
- Farmers' school tax credit;
- Fuel cell electric generating equipment credit (carryover of credit only);
- Green building credit;
- Credit for taxicabs and livery service vehicles accessible to persons with disabilities;
- Historic barn rehabilitation credit;
- Historic homeownership rehabilitation credit;
- Investment tax credit and investment credit for the financial services industry;
- Long-term care insurance credit;

- Low-income housing credit;
- New York State child and dependent care credit;
- Part-year New York City resident child and dependent care credit;
- New York State earned income credit;
- Part-year New York City resident earned income credit;
- New York State household credit;
- Part-year New York City resident household credit;
- Part-year New York City resident school tax credit;
- Nursing home assessment credit;
- Qualified empire zone enterprise (QEZE) credits (QEZE credit for real property taxes and QEZE tax reduction credit);
- Qualified emerging technology company (QETC) credits (QETC capital tax credit, QETC employment credit, and QETC facilities, operations, and training credit);
- Rehabilitation of historic properties credit;
- Resident credit;
- Security officer training tax credit;
- Special additional mortgage recording tax credit; and
- Solar energy system equipment credit.

**Note:** Part-year New York City resident individuals who do not owe any income tax and are **not** required to file a New York State personal income tax return may qualify to claim a refund of the New York City school tax credit. See Form NYC-210, *Claim for New York City School Tax Credit*, and the instructions for Form NYC-210.

For more information on income tax credits visit our Web site.

### **Temporary deferral of certain tax credits**

Effective for tax years beginning on or after January 1, 2010, and before January 1, 2013, certain tax credits will be subject to a temporary deferral in any tax year that the total amount of those credits that would otherwise

be used to reduce the your tax liability or be refunded or credited as an overpayment to estimated tax is in excess of \$2 million.

You will be allowed to claim the deferred credit amounts starting with tax years beginning on or after January 1, 2013. No interest will be paid on the deferred credit amounts.

For more information, see TSB-M-10(5)C, (11)I, *Temporary Deferral of Certain Tax Credits*.

## Tax shelters

The New York State Tax Law requires you to disclose certain information relating to transactions that present the potential for tax avoidance (a tax shelter). These reporting requirements are similar to the tax shelter disclosure requirements for federal income tax purposes.

Separate reporting requirements are imposed on those who utilize tax shelters and those who promote the use of tax shelters.

Every taxpayer who files an income tax return on or after June 13, 2005, who is or was also required to file a disclosure statement related to a reportable transaction or a listed transaction with the Internal Revenue Service (IRS), pursuant to section 6011 of the Internal Revenue Code (IRC), must disclose that information using New York State Form DTF-686, *Tax Shelter Reportable Transactions – Attachment to New York State Return*, for any tax shelter activities in which the taxpayer participated in before July 1, 2011.

For tax years beginning on or after January 1, 2006, taxpayers who participate in New York reportable transaction are required to disclose their participation with their tax return for that tax year using Form IT-686-ATT, *New York Reportable Transaction Disclosure Statement and Request for a Determination*, for any tax shelter activities in which the taxpayer participated in before July 1, 2011.

Every person required to make and file a statement or return pursuant to IRC section 6111 (material advisor) on or after April 12, 2005, and prior to July 1, 2011, must file a duplicate of that statement or return, including all documentation submitted to the IRS in connection with the statement or return, with the Commissioner of Taxation and Finance if **any** of the following apply:

- The person is organized in this state.
- The person is doing business in this state.
- The person is deriving income in this state.

- The list, required to be maintained by this person pursuant to IRC section 6112, identifies or is required to identify a taxpayer subject to tax under Tax Law Articles 9, 9-A, 22, 32, or 33, and this person is a material advisor, as defined in IRC section 6111, who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction.

**Exception:** A material advisor who is required to file a duplicate of the statement or return submitted to the IRS pursuant to IRC section 6111 may file an abbreviated disclosure statement if **both** of the following apply:

- The material advisor has designated one person as the designated material advisor for federal income tax purposes (a designation agreement).
- The designated material advisor elects collective disclosure by supplying a list of names, addresses, and tax identification numbers for each of the material advisors included in the IRS designation agreement.

For more information, visit our Web site.

## **Estimated income tax requirements**

New York State Tax Law requires you to pay income tax during the year, either through withholding or estimated tax.

You may have to pay estimated tax if:

- you are self-employed,
- you receive a taxable pension or annuity, or
- you receive any other income from which taxes are not withheld.

If you have substantially underpaid your taxes during the year (either through insufficient estimated tax payments, or insufficient withholding tax, or a combination of the two), you will probably have to pay a penalty in addition to your tax.

Generally, you must pay estimated income tax if you expect to owe, after subtracting your tax withheld and credits, at least \$300 of either New York State, New York City, or Yonkers income tax, and you expect your withholding and credits to be less than the smaller of:

- 90% of your income tax liability for the current tax year; or

- 100% of your income tax liability from the previous tax year (110% of that amount if you are not a farmer or fisherman and the New York adjusted gross income on that return is more than \$150,000 or, if married filing separately, more than \$75,000), based upon a return covering 12 months.

**Note:** Due to Tax Law changes enacted in 2010, in determining whether you paid 100% (or 110%, if applicable) of the tax shown on your 2009 tax return, you must recompute your 2009 tax using the new 2010 itemized deduction income limitation rule and credit deferral rules (see Form IT-2105-I, *Instructions for Form IT-2105*).

You do not have to include in your estimate any amount of sales or use tax you expect to owe on your personal income tax return.

If you are married, each spouse should maintain a separate estimated income tax account. If you and your spouse each maintain an estimated tax account and file a joint New York State income tax return, the balances of both accounts will be credited to your joint income tax return.

For more information see Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals*, and Form IT-2105-I, *Instructions for Form IT-2105*.

**Note:** You can make estimated tax payments, check your balance, and reconcile your estimated income tax account online using our Web site.

#### **Sale or transfer of real property by a nonresident**

Nonresident individuals, estates, and trusts are required to pay estimated tax on the gain, if any, from the sale or transfer of certain real property located in New York State.

For more information, see Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, and the instructions for Form IT-2663.

#### **Sales, conveyances, or other dispositions of shares of stock in a cooperative housing corporation**

Nonresidents are required to pay estimated personal income tax on the gain, if any, from certain sales, conveyances, or other dispositions of shares of stock in a cooperative housing corporation, in connection with the grant or transfer of a proprietary leasehold by the owner of the shares, where the cooperative unit represented by these shares is located in New York State.

For more information, see Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*, and the instructions for Form IT-2664.

#### **When to file**

You should file your 2010 income tax return and pay any amounts you owe as soon as you can after January 1, 2011, but not later than April 18, 2011. If you file late, you may have to pay interest and penalties (see page 33). If

you file for a fiscal year, your return and first payment of estimated income tax are due by the fifteenth day of the fourth month following the end of your fiscal year.

When a due date falls on a Saturday, Sunday, or legal holiday, you are permitted to file and pay on the next business day.

### **Automatic six-month extension of time to file**

If you cannot meet the filing due date, you may request an extension of time by filing Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*. The filing due date for your income tax return will be automatically extended for six months if you file Form IT-370 on or before the due date of your return and pay any income tax due with your Form IT-370. You must also pay any sales or use tax you owe at the time you request the extension.

If you have Internet access, you can Web file your extension request for free from our Web site. If you use a paid preparer to file your request for an extension and the preparer will e-file your personal income tax return, the preparer must e-file your extension. If you are using tax preparation software, check your software package to see if you have the option to e-file your request for an extension.

An extension of time to file does not extend your time to pay; full payment must be made of any balance due with this automatic extension of time to file. You may pay by check, money order, electronic funds withdrawal, or credit card.

**Note:** The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department will not charge the fee.

You must estimate your New York State, New York City, and Yonkers income taxes due, but be as exact as you can with the information you have (see *Estimated income tax requirements* on page 25). If we later determine that your estimate was not reasonable, the extension will not be allowed, and you may be subject to penalty and interest.

If you expect to receive a refund or anticipate having no amount of New York State, New York City, or Yonkers income tax due; or state or local sales or use tax remaining unpaid as of the due date of your return, we will accept a copy of federal Form 4868 in place of Form IT-370. Send us a copy of federal Form 4868 on or before the due date of your return. Write *New York State copy* at the top of the form and mail it to:

Extension Request–NR  
PO Box 4126  
Binghamton, NY 13902-4126

To file your New York State extension online and learn about our payment options, visit our Web site.

**Automatic two-month extension**

If you qualify for a two-month automatic extension of time to file your federal income tax return because (1) you are a U.S. citizen or a U.S. resident living outside the U.S. and your main place of business or post of duty is outside the U.S. and Puerto Rico, or (2) you are in military service and live outside the U.S. and Puerto Rico when your 2010 return is due, you are entitled to a similar two-month automatic extension of time to file your state income tax return. The time to pay your New York State, New York City, and Yonkers income tax and any state or local sales or use tax is similarly automatically extended. However, even if you qualify for the automatic two-month extension of time to file your New York return, interest will be charged on income tax not paid before the due date, determined without regard to any extension of time. Interest is a charge for the use of money and in most cases may not be waived.

If you are serving or did serve in a combat zone or certain other designated areas, you may qualify for additional extensions of time to file your return. For more information on extensions of time to file and other tax relief for military personnel, see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*.

If you cannot file your return on or before the end of the automatic two-month extension, file Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals* and pay any tax due with it to receive an additional four months to file.

**Extension of time to file beyond six months**

New York State personal income tax regulations section 157.3(b)(1)(i) allows the department to grant an extension of time to file for longer than six months because you are outside the United States and Puerto Rico, or you intend to claim nonresident status based on the 548-day rule (see page 8). For information on how to request an extension of time beyond six months, see the instructions for Form IT-203.

**Automatic extension for death of a spouse**

Effective for tax years beginning on or after January 1, 2010, if your spouse dies within 30 days prior to the due date for filing a personal income tax return or paying the tax due on that return, the department will grant you an automatic extension of 90 days to file your income tax return and to pay the tax due on the return. No penalties or interest for late filing or late payment will be imposed during this 90-day extension period.

- If you file a paper return, you must enter the decedent's date of death in the space provided and you must enter **D9** in the special condition code box provided on the front page of the New York State personal income tax return.

- If you e-file your return, you must enter the decedent's date of death in the space provided and must enter **D9** in the special condition code box. If the tax preparation software does not support a special condition code, the return should be filed on paper following the instructions for a paper return.

## **Electronic tax filing (e-file)**

You can file your income tax return electronically (e-file) using your personal computer and an approved commercially available software package, or you can choose to have a tax professional e-file for you.

If you choose to use a tax professional, ask the preparer if he or she is authorized to e-file your income tax return. Any tax professional that can e-file federal tax returns is authorized to e-file New York tax returns, as long as they are using software that has been approved for the New York e-file program. You can also access the IRS interactive e-file provider site ([www.irs.gov](http://www.irs.gov)) to help you find a tax professional or tax preparation business near you.

E-filing is the fastest way to receive your refund. The speed and accuracy of computers allow electronic returns to be processed faster than paper returns, and using tax preparation software greatly reduces the possibility of errors and delays. To receive your refund even faster, you may choose to have it deposited directly into your savings or checking account (see *Direct deposit of refunds* on page 30).

E-filing is faster and more accurate than paper filing, and, if you qualify, it may be free. Several tax preparers and tax preparation software providers offer free or discounted e-filing. You may also be able to file your return yourself using the internet.

You may pay a balance due on an e-filed return by submitting a check or money order with Form IT-201-V, *Payment Voucher for E-Filed Income Tax Returns*, by using your credit card, or by authorizing the Tax Department to withdraw the payment from your bank account (electronic funds withdrawal). You must include authorization and account information for electronic funds withdrawal with your electronic return and you cannot change it once it is transmitted. To avoid interest and penalties, your check or money order must be mailed, credit card payment authorized, or electronic funds withdrawal made, by the filing due date.

For more information and a complete list of New York State tax forms that can be e-filed, visit our Web site.

## **Payment options**

If you have a balance due on your return, you may pay by check or money order. You may also pay a balance due by electronic funds withdrawal or by using your credit card. For specific information on payment options, see the instructions for the tax form or tax preparation software you are using.

**Note:** The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department will not charge the fee.

#### **Electronic funds withdrawal**

If you file Form IT-203 and you have a balance due, you can authorize payment by electronic funds withdrawal from your designated bank account. By choosing this option, you authorize the New York State Tax Department to transfer money from your account to the state's account.

You must include authorization and account information for electronic funds withdrawal with your return and you cannot change it once your return is mailed or transmitted (e-file). You must specify a payment date up to and including April 18, 2011. If you file before April 18, money will not be withdrawn from your account before the date you specify. To avoid interest and penalties, you must authorize a withdrawal on or before the filing due date. If you designate a weekend or a bank holiday, the payment will be withdrawn the next business day.

For more information, see the instructions for the form or tax preparation software you are using, or visit our Web site.

#### **Paying by credit card**

You can use your American Express Card, Discover/Novus, VISA, or MasterCard to pay the amount you owe on your 2010 New York State personal income tax return, or to make tax year 2011 quarterly estimated income tax payments.

For more information on the credit card program, visit our Web site or refer to the instructions of the tax form you are using.

#### **Overpayments, refunds, and collection of debts**

##### **Direct deposit of refunds**

You have the option to have your income tax refund deposited directly into your bank account. Payment by this method is more secure since there is no check to get lost or stolen. With direct deposit, you will receive your refund faster than if it were sent by mail. Direct deposit is more convenient since you eliminate the need to go to the bank to make a deposit. For more information, see the instructions of the form or tax preparation software you are using.

##### **Refund by mail**

If you compute an overpayment on your income tax return, you may choose to have the overpayment refunded by check via US mail. The Tax Department will mail your check to the **mailing address** listed on your income tax return.

**Estimated tax for  
2011**

**Note:** Paper check refunds might be significantly delayed as compared to using direct deposit.

**Collection of debts  
from your refund**

You have the option of applying all or a portion of your overpayment to your 2011 estimated income tax account by completing the appropriate line(s) on your income tax return. If you choose to apply all or a portion of your overpayment to your 2011 estimated income tax, you generally cannot change that decision after April 18, 2011.

We will keep all or part of your overpayment (refund) if you owe a New York State tax liability or a New York City or Yonkers personal income tax liability; if you owe past-due support or a past-due legally enforceable debt to the Internal Revenue Service (IRS) or a New York State agency, or to another state; if you defaulted on a governmental education loan, state university, or city university loan; or if you owe a New York City tax warrant judgment debt. We will refund any amount that exceeds your debt.

A *New York State agency* includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district.

If you have any questions about whether you owe a past-due legally enforceable debt to the IRS, to another state, or to a New York State agency, contact the IRS, the other state, or the New York State agency.

For New York State tax liabilities or New York City or Yonkers personal income tax liabilities, call (518) 457-5434 or write to:

NYS Tax Department  
Collections and Civil Enforcement Division  
W A Harriman Campus  
Albany, NY 12227

For information relating to a New York City tax warrant judgment debt, call (212) 232-3550.

**Disclaiming of  
spouse's debt**

If you are filing a joint return and you do not want to apply your part of the overpayment to your spouse's debt because you are not liable for it, complete Form IT-280, *Nonobligated Spouse Allocation*, and attach it to your original return. You cannot file an amended return to disclaim your spouse's debt after you have filed your original return.

We will notify you if we keep your overpayment because of a past-due legally enforceable debt to the IRS or a tax debt to another state. You cannot use Form IT-280 to disclaim liability for a legally enforceable debt

to the IRS or to disclaim a tax liability owed to another state. You must contact the IRS or the other state to resolve your responsibility for the asserted liability.

Form IT-280 is used only to protect your portion of a joint refund from being applied to a debt owed solely by your spouse. This form should not be used to request innocent spouse relief.

### **Innocent spouse relief**

You may qualify for relief from full or partial tax liability on a joint return as an innocent spouse if **all** of the following apply:

1. There is an understatement of tax on a joint return because of an omission or error involving your income, deduction, credit, or basis.
2. You can show that when you signed the return you did not know and had no reason to know of the understatement.
3. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated tax.

You may also request a *separation of liability* for any understated tax on a joint return if you and your spouse or former spouse are no longer married, are legally separated, or have lived apart at all times during the 12-month period prior to the date of filing for relief.

If you do not qualify as an innocent spouse or for separation of liability, you may qualify for *equitable relief* if you can show that, taking into account all the facts and circumstances, you should not be held liable for any understatement or underpayment of tax.

You must use Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, to request relief (as described above) for a tax year beginning on or after January 1, 1999. The department will consider whether you qualify for relief under innocent spouse relief, separation of liability, or equitable relief.

Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, is used only for relief under the circumstances stated above. If you want to disclaim your spouse's defaulted governmental education loan, state university, or city university loan, or past-due support, or past-due legally enforceable debt owed to a New York State agency, or a New York City tax warrant judgment debt because you do not want to apply your part of a joint refund or refundable credit to a debt owed solely by your spouse, use Form IT-280, *Nonobligated Spouse Allocation* (see *Disclaiming of spouse's debt* on page 31).

For more information, see Publication 89, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*.

## Adjustments for errors

If you make certain errors on your 2010 personal income tax return, the Tax Department will adjust your return during processing. If an adjustment is made to your return, you may owe less tax or you may owe more tax (plus penalty and interest if applicable). Additionally, an adjustment could change the amount of the refund you expected. If your return is adjusted, you will receive an *Account Adjustment Notice* from the department.

## Interest charges

Interest will be charged on income tax that is not paid on or before the due date of your return, even if you received an extension of time to file your return. Interest is a charge for the use of money, and in most cases may not be waived. Interest is compounded daily and the rate is adjusted quarterly.

If you are due a refund, you may also be entitled to receive interest on your overpayment. Interest is compounded daily and the rate is adjusted quarterly. If the refund is made within 45 days after the due date of your return, no interest will be paid.

If you file your return after the due date (including extensions), no interest will be paid if the refund is made within 45 days after the date you filed. If the refund is not made within this 45-day period, interest will be paid from the due date of your return or from the date you filed, whichever is later. However, interest will not be paid to you on the portion of your refund that is attributable to the real property tax credit, New York State earned income credit, child or dependent care credit, college tuition credit, farmers' school tax credit, New York City school tax credit, the New York City earned income credit, or certain other refundable credits, or if your return cannot be processed.

To be processed, your return must show your name, address, social security number, signature, and the information needed to mathematically verify your tax liability.

## Penalties

### Late filing penalty

If you file late, you will be charged a penalty of 5% of the income tax due for each month, or part of a month, the return is late (maximum 25%), unless you have a valid extension of time to file or you attach to your return an explanation showing reasonable cause for the delay. If your return is more than 60 days late, this penalty will not be less than \$100, or 100% of the amount required to be shown as income tax due on the return, whichever is less, reduced by any tax paid and by any credit that you may claim.

**Late payment penalty**

If you do not pay your income tax when due, you will be charged a penalty of  $\frac{1}{2}$  of 1% of the unpaid amount for each month or part of a month it is not paid (maximum 25%). This penalty is in addition to the interest charged for late payments. This penalty may be waived if you attach to your return an explanation showing reasonable cause for paying late.

**Tax figured incorrectly**

You may have to pay a penalty if the income tax you report on your return is less than your correct income tax. If you are off by more than 10% or \$2,000, whichever is more, you may have to pay this penalty.

The penalty is 10% of the difference between the income tax you reported and the income tax you actually owe.

**Underwithholding and underpayment of estimated income tax**

You may be subject to a penalty for underpayment of estimated income tax if your 2010 withholding and estimated income tax payments do not equal:

- at least 90% of your 2010 income tax; or
- 100% of your 2009 income tax (110% of that amount if you are not a farmer or fisherman and the New York adjusted gross income on that return is more than \$150,000 or, if married filing separately, more than \$75,000), based upon a return covering 12 months. **Note:** To meet this condition, the tax shown on your 2009 return must be recomputed using the new 2010 itemized deduction income limitation rule and credit deferral rules.

However, you will only be charged the penalty if you owe at least \$300 of New York State or New York City or Yonkers income tax after deducting tax withheld and credits you are entitled to claim. For more information see Form IT-2105.9, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries*, and its instructions (Form IT-2105.9-I).

**Negligence penalty**

If your return does not show all of the income tax imposed under the Tax Law, its rules or regulations, due to negligence or intentional disregard but not with intent to defraud, you may be charged a penalty of 5% of any deficient amount.

In general, a deficiency is the difference between the correct income tax and the income tax shown on your return. In addition, 50% of the interest due on any underpayment resulting from negligence will be added to your tax.

**Fraudulent returns**

If any part of a deficiency is due to fraud, you may be charged a penalty of two times the amount of deficiency. In general, a deficiency is the difference between the correct income tax and the income tax shown on your return.

**Frivolous returns**

A penalty of up to \$5,000 will be imposed on any person who files a frivolous tax return. A return is considered frivolous when it does not contain information needed to judge the correctness of the tax return, or reports information that is obviously and substantially incorrect, and is intended to delay or impede the administration of the personal income tax.

**Other taxes****Sales or use tax**

You must report any unpaid sales or use tax owed for 2010 on your personal income tax return for 2010. You owe sales or compensating use tax if you:

- purchased an item or service subject to tax that is delivered to you in New York State without payment of New York State and local tax to the seller; or
- purchased an item or service outside New York State that is subject to sales tax in New York State (and you were a resident of New York State at the time of the purchase) with subsequent use in New York State.

**Note:** You may be entitled to a credit for sales tax paid to another state. See the exact calculation method for sales tax in the instructions for Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*.

For sales and use tax purposes, a resident includes persons who have a permanent place of abode in the state. Accordingly, you may be a resident for sales tax purposes even though you may not be a resident for income tax purposes. See the instructions for Form ST-140 for more information.

You may not use your personal income tax return to report:

- Any sales and use tax on business purchases if the business is registered for sales and use tax purposes. You must report this tax on the business's sales tax return.
- Any unpaid sales and use tax on motor vehicles, trailers, all-terrain vehicles, vessels, or snowmobiles. This tax is paid directly to the New York State Department of Motor Vehicles. However, if you will not be registering or titling your motor vehicle, trailer, all-terrain vehicle, vessel, or snowmobile at the DMV, you should remit the tax directly to the Tax Department using Form ST-130, *Business Purchaser's Report of Sales and Use Tax*, or Form ST-140.

An unpaid sales or use tax liability commonly arises if you made purchases through the Internet, by catalog, from television shopping channels, or on

an Indian reservation, or if you purchased items or services subject to tax in another state and brought them back to New York for use here.

***Example 1:*** You purchased a computer over the Internet that was delivered to your house in Monroe County, New York, from an out-of-state company and did not pay sales tax to that company.

***Example 2:*** You purchased a book on a trip to New Hampshire that you brought back to your residence in Nassau County, New York, for use there.

You may also owe an additional **local** tax if you made a purchase in a locality in New York State and brought the item into or subsequently used the service in another New York State locality where you were a resident and that locality had a higher tax rate than where you made the purchase.

If you are not filing an income tax return but owe sales or use tax for 2010, you must pay any unpaid sales or use tax liability by filing Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*, by April 18, 2011. Alternatively, you may file Form ST-141, *Individual Purchaser's Periodic Report of Sales and Use Tax*, periodically to report sales or use tax liability on other than an annual basis.

For additional information, see the instructions for Form 203 and Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department*.

### **Metropolitan commuter transportation mobility tax (MCTMT)**

The MCTMT applies to certain employers. It also applies to individuals (including partners in partnerships, and partners and members of limited liability partnerships (LLPs) and limited liability companies (LLCs) that are treated as partnerships for federal income tax purposes) who have net earnings from self-employment and who are engaging in business within the metropolitan commuter transportation district (MCTD).

The *metropolitan commuter transportation district (MCTD)* includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

For more information on the MCTMT, see Publication 420, *Guide to the Metropolitan Commuter Transportation Mobility Tax*.

### **Privacy and confidentiality**

The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, you must give specific written authorization to a practitioner, paid preparer or other representative before he or she will be given access to your confidential records or be allowed to represent you before the Tax

Department or the Division of Tax Appeals. There are various levels of authorization you can give.

#### **Third-party designee**

If you want to authorize a friend, family member, or any other person (third-party designee) you choose to discuss your tax return with the New York State Tax Department, check the **Yes** box in the *Third-party designee* area of your return and enter the information requested.

If you mark the **Yes** box, you (and your spouse, if filing a joint return) are authorizing the Tax Department to discuss with your designee any questions that arise during the processing of your return. You are also authorizing the designee to:

- give the Tax Department any information that is missing from your return;
- call the Tax Department for information about the processing of your return or the status of your refund or payment(s); and
- respond to certain Tax Department notices that you share with the designee about math errors, offsets, and return preparation. The Tax Department will **not** send notices to the designee.

You are not authorizing the designee to receive any refund check, bind you to anything (including additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file a power of attorney.

The authorization will end automatically one year after the later of the return due date (including any extension) or the date you file your return.

#### **Power of attorney**

A power of attorney is evidence that a practitioner or other person may act on your behalf. The power of attorney must contain explicit authorization for your representative to act for you, and must be properly completed and signed.

The Tax Department prefers that practitioners use one of the Tax Department's power of attorney forms:

- Form POA-1, *Power of Attorney*, or
- Form ET-14, *Estate Tax Power of Attorney*.

The department will accept other forms if they contain all the necessary elements as required on the Tax Department forms.

Tax Department power of attorney forms may be used for New York State tax matters, New York City tax matters, or both.

## **Voluntary Disclosure and Compliance Program (VDC Program)**

The Voluntary Disclosure and Compliance Program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the Tax Department, taxpayers will avoid tax penalties as well as civil, administrative, and criminal actions by the department. In addition, the taxpayer will not be subject to any criminal tax prosecution in New York State for the disclosed conduct.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the department, and who meets all of the following criteria:

- The taxpayer is not currently under audit by the department.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible the tax must not have been previously assessed.

For additional information on this program, visit our Web site.

## **Consumer Bill of Rights Regarding Tax Preparers**

Taxpayers who use the services of paid tax preparers are entitled to protection from unfair treatment. While most tax preparers act within the law and treat their clients fairly, there are some that do not.

All tax preparers are subject to certain requirements concerning refund anticipation loans (RALs) and refund anticipation checks (RACs). Tax preparers are prohibited from advertising RALs as refunds (for example, advertising a RAL as an *instant refund*). Additionally, any advertisement by

a tax preparer that mentions RALs must state conspicuously that a RAL is in fact a loan and that a fee or interest will be charged by the lending institution. The lending institution must be identified in the advertisement. In addition, before a taxpayer enters into a RAL or an agreement for a RAC, the tax preparer facilitating the loan must provide a disclosure statement to the taxpayer in writing.

The Tax Department produces and makes available an informational flier providing certain information for consumers about their rights regarding tax preparers. The flier is Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*, and it is available on our Web site.

**Note:** Tax preparers (except those listed as *Exempt preparers* below and tax preparers who prepare tax returns within New York City) are required under the General Business Law (Article 24-C) to provide you with contact information and a copy of Publication 135.

### Requirement to provide contact information

Tax preparers are required to provide each of their customers with a receipt containing an address and phone number at which the preparer can be contacted throughout the year. If the actual person who prepared the return is an employee, partner, or shareholder of an entity (business), the general address and phone number of the business should be on the receipt.

### Exempt preparers

The following tax preparers are exempt from the requirements to provide you with contact information and a copy of Publication 135:

- an employee or officer of a business enterprise who is preparing the tax returns of that business enterprise;
- a fiduciary, and the employees of the fiduciary, who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor, or beneficiaries;
- an attorney who advises or assists in the preparation of tax returns in the practice of law, and his or her employees;
- a certified public accountant (CPA) licensed under the New York State education law or licensed by one or more of the states or jurisdictions of the United States, and his or her employees;
- a public accountant licensed under the New York State education law and his or her employees;
- an employee of a governmental unit, agency, or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her duties; and

- an agent enrolled to practice before the Internal Revenue Service (IRS).

**New York City tax  
preparers**

Tax preparers operating within New York City are not subject to the provisions of Article 24-C of the General Business Law for tax returns actually prepared within the city. Instead, Subchapter 8 of Chapter 4 of Title 20 of the Administrative Code of the City of New York provides rules that apply specifically to tax preparers operating in New York City.

For more information on New York City's consumer bill of rights regarding tax preparers, visit the New York City Department of Consumer Affairs Web site ([www.nyc.gov/consumers](http://www.nyc.gov/consumers)) or dial 311 (212-NEW-YORK if you are outside New York City).

New York State Tax Department

## Online Services

**Create an Online Services  
account and log in to:**

- make payments,
- file certain returns,
- view account information,  
and more.

Access is available 24 hours a day, 7 days  
a week (except for scheduled maintenance).

**[www.tax.ny.gov](http://www.tax.ny.gov)**

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**Notes**

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## Need help?



### Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)

Get answers to your questions; check your refund status; check your estimated tax account; download forms and publications; get tax updates and other information.



**Telephone assistance** is available from 8:30 A.M. to 4:30 P.M. (eastern time), Monday through Friday.

Refund status: (518) 457-5149  
(Automated service for refund status is available 24 hours a day, 7 days a week.)

**Personal Income Tax Information Center:** (518) 457-5181  
To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.