

Taxation of Nonresident and Part-Year Resident Individuals Who Perform Duties on Vessels That Operate in More Than One State

General

Recent federal legislation amended Section 11108 of Title 46 of the United States Code to prohibit state and local governments from imposing income taxes on certain individuals who perform regularly assigned duties on vessels operating on the navigable waters of more than one state unless the individual is a resident of that state.

The new law provides that compensation paid to individuals:

- (1) engaged on a vessel to perform assigned duties in more than one state as a pilot licensed under section 7101 of the United States Code or licensed or authorized under the laws of a state; or
- (2) who 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,

will be subject to state and local taxes only in the individual's state of residence or political subdivision. The new law applies to compensation paid after November 8, 2000. An explanation of how to apply the law to the New York State, New York City and Yonkers income taxes follows.

New York State Nonresidents

Section 601(e) of the New York State Tax Law imposes a personal income tax on a nonresident individual on the individual's taxable income that is derived from New York sources. The tax is equal to the tax computed as if the individual were a New York State resident for the entire year, reduced by certain credits, multiplied by the income percentage.

The numerator of the fraction used to compute the income percentage is the individual's New York source income. The New York source income of a nonresident is the sum of the items of income, gain, loss and deduction entering into federal adjusted gross income derived from or connected with New York sources and any New York addition and subtraction modifications under section 612(b) and 612(c) of the Tax Law that relate to income derived from New York sources¹.

¹Income derived from New York sources includes income attributable to a business, trade, profession or occupation carried on in New York State.

The denominator of the fraction used to compute the income percentage is the nonresident's New York adjusted gross income from all sources for the entire year.²

Under the new federal law, if an individual performs assigned duties as a pilot, master, officer, or crewman on a vessel as described above, and is not a resident of New York State, the compensation for such duties received after November 8, 2000, does not constitute income derived from New York State sources and is not includable in New York source income (the numerator of the income percentage). However, the compensation would be included in New York adjusted gross income (the denominator of the income percentage) and would be included in computing the individual's New York State tax as if a resident for the entire year.

Note: This federal legislation renders obsolete New York State Regulation Section 132.19(c) concerning the taxability of the income of a nonresident seaman operating between New York State and New Jersey. Under that regulation, 50 % of the compensation of a nonresident seaman operating between New York and New Jersey was includable in New York source income.

Yonkers Nonresidents

Generally, a Yonkers nonresident individual who earns wages or has net earnings from self-employment within that city is subject to the Yonkers nonresident earnings tax. Under the new federal law, if an individual performs assigned duties as a pilot, master, officer or crewman on a vessel as described above, and is not a resident of the city of Yonkers, the compensation he or she receives for the performance of these duties does not constitute wages or net earnings from self-employment derived from Yonkers sources and is not subject to the nonresident earnings tax.

New York City Nonresidents

New York City nonresidents are not subject to any New York City income or earnings tax.

Part-Year Residents

New York State Part-Year Resident

A New York State part-year resident individual computes his or her New York State tax in the same manner as a nonresident individual. However, the New York source income of a part-year resident (the numerator of the income percentage) is the sum of the following:

²The new federal law does not affect the computation of the denominator of the income percentage.

- (1) the individual's New York adjusted gross income from all sources for the resident period, determined as if the individual's tax year for federal income tax purposes were limited to the resident period;
- (2) the individual's New York adjusted gross income derived from New York sources for the nonresident period, determined as if the individual's tax year for federal income tax purposes were limited to the nonresident period; and
- (3) the special accruals required under section 639 of the Tax Law that relate to adjusted gross income.

If an individual who is covered by the new federal law has a change of residence status during a tax year, and the individual's nonresident period includes any day after November 8, 2000, the entire amount of compensation paid to the individual for performance of duties covered by the new federal law during the resident period is included in New York source income (the numerator of the income percentage). In addition, compensation paid for any day in the nonresident period prior to November 9, 2000 is included in New York source income to the extent the individual performed services in New York on these days. However, for any nonresident day after November 8, 2000, none of the compensation paid for that day is included in New York source income.

New York City Part-Year Residents

A New York City part-year resident individual is only subject to the New York City personal income tax for the period of residence. For a part-year resident, the New York City personal income tax is computed based upon all items of income, gain, loss, and deduction for the period of residence. If an individual covered by the new federal law changes New York City resident status during the tax year, the entire amount of the compensation paid to the individual for the performance of these duties during the resident period is subject to the New York City personal income tax.

Yonkers Part-Year Residents

A Yonkers part-year resident individual is subject to the Yonkers income tax surcharge for the period of residence. The Yonkers income tax surcharge for the period of residence is equal to the allocated net New York State tax multiplied by the Yonkers income tax surcharge rate. The allocated net New York State tax is equal to the net New York State tax³ for the entire year multiplied by a fraction. The numerator of the fraction is the individual's New York adjusted gross income for the period of residence. The denominator of the fraction is the individual's New York

³ Net New York State tax is the individual's New York State tax computed as if the individual were a resident for the entire year, reduced by any New York State credits and increased by any other New York State taxes.

adjusted gross income for the entire year. The nonresident earnings tax, if applicable, is based upon wages or net earnings from self-employment derived from Yonkers sources for the period of nonresidence.

If an individual who is covered by the new federal law has a change of Yonkers resident status during the tax year, and the individual's nonresident period includes any day after November 8, 2000, the entire amount of compensation paid for such duties for the resident period is included in the numerator of the fraction used to compute the allocated net New York State tax. In addition, compensation paid for any day in the nonresident period prior to November 9, 2000 will be subject to the nonresident earnings tax to the extent that the individual performed services in Yonkers on those days. However, for any nonresident day after November 8, 2000, none of the compensation paid for that day is subject to the Yonkers nonresident earnings tax.

Amended Returns

Nonresident taxpayers subject to the new federal law who have previously filed a New York return and included the compensation received after November 8, 2000 in New York source income or in wages subject to the Yonkers nonresident earnings tax may file an amended return within the statute of limitations and claim a refund. Generally, an amended return claiming credit for, or a refund of, an overpayment must be filed within three years of the date that the original return was filed or within two years of the date the tax was paid, whichever is later. A return filed before the original due date is treated as being filed on that date.

Withholding Tax

Under previously enacted federal law, New York State, New York City and Yonkers tax may not be withheld from compensation paid to a seaman engaged in foreign coastwise, intercoastal, interstate, or noncontiguous trade. This rule applies even if the seaman is a resident of New York State, New York City or Yonkers. The new federal law does not effect this rule.