

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

TSB-M-80-(10) I  
Income Tax  
December 31, 1980

Military Service Personnel

Exemptions From Withholding

The Department of Defense has devised form DD 2058-I (see page 3) which will be available for use by military service personnel so that they may claim exemption from withholding of State income taxes.

Federal form DD 2058-I is currently applicable to the States of New Jersey, New York and Oregon. The instructions for this form list three conditions which must be met by military service personnel in order to qualify for exemption from State income tax withholding. These conditions are:

1. They maintain no place of abode in their State of legal residence during the taxable year,
2. They do maintain a place of abode outside that State for the entire taxable year, and
3. They spend no more than 30 days in that State during the taxable year.

The New York State Personal Income Tax Law contains an additional provision which we refer to as the special 548 day rule. This special 548 day rule provides that a person, even though domiciled in New York State, (or New York City in the case of a domiciliary of that city), would be considered a non-resident for purposes of the New York State income tax and New York City income and earnings taxes, if he meets all three of the following conditions:

1. within any period of 548 consecutive days he is present in a foreign country or countries for at least 450 days, and

---

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

2. during this 548 day period he is not present in New York State and/or the City of New York for more than 90 days and does not maintain a permanent place of abode in New York State and/or the City of New York at which his spouse (unless legally separated) or minor children are present for more than 90 days, and
3. during any period of less than 12 months which is within the 548 day period and which would be treated as a separate taxable period, he is present in New York State and/or the City of New York for no more than the number of days which bears the same ratio to 90 as the number of days in the less than 12 month period bears to 548. This condition is illustrated by the following formula:

$$\frac{\text{Number of days}}{\text{(less than 12 month period)}} \times 90 = \begin{array}{l} \text{number of days} \\ \text{not to be exceeded} \\ \text{in New York State} \\ \text{and/or the City of} \\ \text{New York.} \end{array}$$

The New York State Withholding Exemption Certificate for Military Service Personnel, form IT-2104-MS, (See page 4) includes the three conditions listed on federal form DD 2058-I (Group A) as well as the three conditions of the 548 day rule (Group B).

Accordingly, we will continue to print and have available the New York State Withholding Exemption Certificate for Military Service Personnel, form IT-2104-MS. The IT-2104-MS may be used in lieu of Federal form DD 2058-I by New York State Military Service Personnel who qualify as statutory nonresidents under the 548 day rule and claim exemption from withholding of New York State income taxes.

## STATE INCOME TAX EXEMPTION TEST CERTIFICATE

## DATA REQUIRED BY THE PRIVACY ACT OF 1974

**AUTHORITY:** 5 USC 5516, 5517, and EO 9397, November 1943.

**PRINCIPAL PURPOSE:** To enable the service concerned to terminate withholding of State income taxes applicable to your pay for the tax year specified. Social Security Number (SSN) will be used to provide positive identification.

**ROUTINE USES:** The information obtained will become part of the active duty pay system of records of the service concerned and may be disclosed to the routine users (*including State tax authorities*) of such system as described in the record system notices for such system.

**DISCLOSURE:** Disclosure is voluntary. Failure to complete this form will result in withholding of State income taxes from your pay. Disclosure of SSN is voluntary. However, to avoid erroneous application of your withholding exemption to the account of another member, this exemption certificate will not be processed without your SSN.

TYPE OR PRINT NAME ( <i>Last - First - Middle Initial</i> )	SOCIAL SECURITY NUMBER
MILITARY ADDRESS ( <i>Street Address, City, State, ZIP Code</i> )	TAX YEAR
	STATE OF LEGAL RESIDENCE
ADDRESS OF PLACE OF ABODE OUTSIDE YOUR STATE OF LEGAL RESIDENCE ( <i>Street Address, City, State, ZIP Code</i> )	
I CERTIFY THAT I ANTICIPATE MEETING THE THREE CONDITIONS NECESSARY TO BE EXEMPT FROM WITHHOLDING FOR THE CALENDAR YEAR 19 _____. I ALSO DECLARE THAT I WILL IMMEDIATELY NOTIFY THE FINANCE OFFICER OF ANY CHANGES THAT AFFECT MY WITHHOLDING STATUS.	
SIGNATURE OF APPLICANT	DATE (YYMMDD)

*This form is currently applicable to the States of New Jersey, New York, and Oregon - AND is not to be used to change State of legal residence.*

## INSTRUCTIONS

The explanatory material below should help you determine if you qualify for exemption from State income tax withholding under this test. If you are unsure of your particular State law provisions for exemption from withholding, you should write your State taxing authority.

Residents of applicable states who enter military service and are assigned to duty outside those States do not change residence because of such assignments. They remain residents of those States for tax purposes unless they fulfill all three of the following conditions:

1. They maintain no place of abode in their State of legal residence during the taxable year,
2. They do maintain a place of abode outside that State for the entire taxable year, and
3. They spend no more than 30 days in that State during the taxable year.

**The following are not considered places of abode under condition 2:**

a. An abode maintained while on temporary duty or while attending a specialized training school away from your permanent duty station. A member who is otherwise considered to maintain a place of abode outside his or her State of legal residence does not lose the place of abode solely because of performance of duty at another location if such place of abode is still maintained by the member.

b. Quarters occupied by a barracks, on shipboard, or in bachelor officer quarters at your permanent duty station. This restriction applies only to New Jersey and New York residents. If your status under condition 2 is unclear, you should consult your legal assistance officer before completing the form.

If the spouse and family of a married individual in military service continue to reside in the State or legal residence, their abode is considered to be an abode maintained by the service member. Condition 1 would therefore not be met.

**Effective date of exemption election.** Withholding of State income tax will stop the month after the month in which the certificate is filed. Retroactive adjustments will not be made.

**IT-2104-MS** (6/79)

New York State Department  
of Taxation and Finance

**NEW YORK STATE WITHHOLDING EXEMPTION CERTIFICATE  
FOR MILITARY SERVICE PERSONNEL**

FIRST NAME AND INITIAL		LAST NAME	SOCIAL SECURITY NUMBER
MILITARY ADDRESS, NUMBER AND STREET			TAX YEAR _____
CITY	STATE	ZIP CODE	
ADDRESS OF PERMANENT PLACE OF ABODE, NUMBER AND STREET		CITY, STATE	ZIP CODE

**GENERAL INSTRUCTIONS**

Residents of New York State, who enter military service and are assigned to duty outside New York State, do not change residence because of such assignment and remain New York State residents for tax purposes unless all three of the conditions in either Group A or Group B are met:

Group A:

1. you maintain no permanent place of abode in New York State during the taxable year,
2. you did maintain a permanent place of abode outside New York State during the entire taxable year, and
3. you did not spend more than thirty days in New York State during the taxable year.

Group B:

1. within any period of 548 consecutive days you were present in a foreign country or countries for at least 450 days, and
2. during this 548 day period you were not present in New York State for more than 90 days and did not maintain a permanent place of abode in New York State at which your spouse (unless legally separated) or minor children were present for more than 90 days, and
3. during any period of less than 12 months which is within the 548 day period and which would be treated as a separate taxable period under Section 654 of the Tax Law (change of resident status during the year), you were present in New York State for no more than the number of days which bears the same ratio to 90 as the number of days in the less than 12 month period bears to 548. This condition is illustrated by the following formula:

$$\frac{\text{Number of days in the less than 12 month period}}{548} \times 90 = \text{Number of days not to be exceeded in New York State}$$

If the spouse and family of a married individual in military service continue to reside in New York State, their abode will be considered to be an abode maintained by the serviceman, and Group A, condition #1 will not be met.

A permanent place of abode under Group A, condition #2 is a place maintained from year to year on a continuing basis.

An abode maintained while on temporary duty or attending a specialized training school away from your permanent duty station would not be considered a permanent place of abode, nor would quarters occupied in a barracks, on shipboard or Bachelor Officer Quarters on base qualify as a permanent place of abode.

**SERVICEMAN'S CERTIFICATION** - I certify that I anticipate meeting the three conditions in either Group A or Group B necessary to be exempt from withholding for the calendar year \_\_\_\_\_. I also declare that I will immediately notify the Finance Officer of any changes that affect my withholding status.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_