

Withholding Tax:
Effect of Unconstitutionality of the New Jersey
Emergency Transportation Tax

There have been numerous inquiries as to the impact of the New Jersey Supreme Court decision finding that the New Jersey Emergency Transportation Tax is unconstitutional and how it will affect the withholding of New York State Income Tax on New York residents working in New Jersey after December 31, 1983.

New York State Regulation section 160.1 has required that every employer, who maintains an office or transacts business in New York State and pays wages (which are taxable under New York State Tax Law Article 22) to a resident or nonresident, must withhold New York State tax. New York State regulation section 160.5 requires that these employers (who have New York State residents working outside New York State) must withhold New York State tax on the employee's wages less the amount required to be withheld from those wages under the laws of the State the employee works in. Accordingly, the employer is required to remit the balance to the State of New York where the withholding tax in the other state is less than the withholding tax for the State of New York.

As of January 1, 1984, New Jersey requires withholding for the "Gross Income Tax" on New York State residents working in New Jersey. Since the New Jersey withholding tax amount is generally less than the New York State withholding tax amount, the balance must be remitted to New York State.

Example: A resident of New York State who claims one exemption on his Form IT-2104 is paid \$250 a week by an employer who would be required to deduct and withhold from the employee's wages both New York and New Jersey state income taxes. The total amount required to be withheld under the NY State weekly wage bracket tables is \$9.90.

\$5.10 is withheld for the State of New Jersey in accordance with the New Jersey Gross Income Tax Weekly Withholding Tables and the balance of \$4.80 is to be remitted to New York State.

Employers, who are not required to withhold, (who are New Jersey employers employing New York residents but otherwise having no connection with New York State), may withhold pursuant to a voluntary agreement with the employee. New Jersey employers voluntarily withholding New York State tax must follow the same requirements as for mandatory withholding. If the New York State resident employee does not choose withholding in these instances, depending on his income level and deductions, the employee may be required to file estimated tax with New York State. For information on estimated tax requirements the employee should obtain Form IT-2105.

The provisions of this memo also apply to the Administrative Code of the City of New York as it relates to New York City residents. Accordingly, New York City withholding tax would be required if the employer transacts business or maintains an office in the State of New York. However, there is no provision in the New York City law for the subtraction of tax

withheld by New Jersey or any other state. Therefore, the entire amount of New York City tax withheld is to be remitted to New York State by the employer.

Employers who are affected by the recent New Jersey Supreme Court decision should obtain Form IT-2100, Employer's Withholding Tax Instructions.