

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

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Income Tax
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Nonresident Alimony Deduction

The Court of Appeals, in the case of Friedsam v. New York State Tax Commission, upheld the lower court ruling that overturned the disallowance of alimony paid, as an adjustment to income, on New York State nonresident income tax returns.

The Federal Tax Reform Act of 1976 changed the status of alimony paid from an itemized deduction to an adjustment to income. Under "federal conformity" provisions of the New York State Tax Law, exactly the same treatment of alimony was adopted on New York State resident income tax returns. However, in the case of nonresidents, the Tax Law (Section 632(a)(1)) limits the adjustments to income to those derived from or connected with New York sources. Since the adjustment for alimony was not derived from the nonresidents' New York sources, this adjustment was disallowed on New York State nonresident income tax returns.

The Court of Appeals held that New York State must allow nonresidents an alimony deduction as an "adjustment to income" in the same manner that it was previously allowed as an itemized deduction. Therefore, nonresidents of New York State will be allowed an adjustment to income for alimony paid based on the ratio of total New York income from New York sources excluding alimony paid, to total New York income from all sources, excluding alimony paid.

A separate computation must be made to figure the allowable deduction for alimony.

Example 1:

A New York State nonresident has federal adjusted gross income of \$35,000. Alimony deduction of \$10,000 was subtracted in arriving at this amount.

The taxpayer's federal adjusted gross income includes New York State source income of \$25,000 (exclusive of the alimony deduction). Also, the taxpayer has New York additions of \$15,000 and subtractions of \$10,000 that are New York source items.

The following computation would result:

| | <u>Income from All Sources (Federal Amount Column)</u> | <u>Income from New York State Sources (New York State Amount Column)</u> |
|-------------------------------|--|--|
| Federal Adjusted Gross Income | \$35,000 | |
| Add: Alimony Deduction | 10,000(C) | |
| Total | \$45,000 | \$25,000 |
| New York Additions | 15,000 | 15,000 |
| New York Subtractions | (10,000) | (10,000) |
| Total New York Income | <u>\$50,000(B)</u> | <u>\$30,000(A)</u> |
| | <u>\$30,000(A)</u> | |
| | <u>\$50,000(B)</u> | X \$10,000(C) = \$6,000 |

Enter on the federal adjustments to income line the alimony deduction of \$10,000 in the federal column and \$6,000 in the New York State column.

When msrried taxpayers are filing separately on one form, the total New York income of both spouses must be combined for the computation of the alimony deduction. This is illustrated in the following example:

Example 2:

New York State nonresident married taxpayers are filing separately on one return. Spouse "A" has federal adjusted gross income of \$35,000. Alimony deduction for spouse "A" of \$10,000 was subtracted in arriving at this amount. This spouse's federal adjusted gross income includes New York State source income of \$25,000 (exclusive of the alimony deduction). This spouse also has New York additions of \$15,000 and New York subtractions of \$10,000.

Spouse "B" has federal adjusted gross income of \$25,000. This spouse's federal adjusted gross income includes New York State source income of \$15,000 and no New York adjustments. Spouse "A" uses column A and spouse "B" uses column B of the nonresident income tax return.

The following computation would result:

| | Income from All Sources (Federal Amount Column) | Income from New York State Sources (New York State Amounts Column A Column B) | |
|-------------------------------|--|--|--------------------|
| Federal Adjusted Gross Income | \$60,000 | | |
| Add: Alimony Deduction | <u>10,000(F)</u> | | |
| Total | \$70,000 | \$ 25,000 | \$15,000 |
| New York Additions | 15,000 | 15,000 | |
| New York Subtractions | <u>(10,000)</u> | <u>(10,000)</u> | |
| Total New York Income | <u>\$75,000(E)</u> | \$30,000(D) | <u>\$15,000(D)</u> |
| | <u>\$45,000(D)</u> | | |
| | $\$75,000(E) \times \$10,000(F) = \$6,000$ | | |

Enter on the federal adjustments to income line the alimony deduction of \$10,000 in the federal column and \$6,000 for spouse "A" in the New York State column.

Taxpayers may file amended returns to claim the deduction for alimony for prior years within the statute of limitations.