

Withholding Tax
Submission of Certain Withholding Tax Certificates

The New York State Personal Income Tax Regulations (Sections 160.4 and 160.8) have been amended to require employers to send to the Tax Department copies of withholding tax certificates filed by employees under certain limited circumstances as described below.

Certificates to be Submitted

An employer must send the Tax Department a copy of any withholding tax certificate received during a calendar quarter from an employee who is still employed by that employer at the end of the calendar quarter if:

- a) The employee files an Employee's Withholding Allowance Certificate, Form IT-2104, claiming more than 14 withholding allowances; or
- b) The employee files a Certificate of Exemption from Withholding, Form IT-2104E, and the employer reasonably expects that the employee's wages will usually exceed \$200.00 per week.

A copy of any written statement received from the employee in support of the claims made on the certificate must be included with the submission.

When and Where to Submit

The first submission under these new regulations was due July 31, 1987, and applied to certificates in effect during the months of January through June, 1987. Future due dates for submitting certificates are as follows:

<u>Reporting Period*</u>	<u>Due Date*</u>
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31

In addition, the employer must include with the submission a statement showing the employer's name, address, employer identification number and the number of certificates submitted.

This information is to be mailed to:

New York State Department of Taxation and Finance
Income Tax Audit Administrator
Withholding Certificate coordinator
Building 9, W. A. Harriman Campus
Albany, New York 12227

* The employer has the option to submit the required copies for a shorter reporting period or prior to the due date shown above.

Tax Department Review and Determination of Withholding Allowances

After the copies are submitted the employer shall continue to withhold tax from the employee's wages or continue to exempt the employee's wages from withholding based on *the* withholding certificate submitted unless or until the employer is notified in writing by the Tax Department that the certificate is defective.

If the Tax Department determines that an employee's withholding certificate is defective, the employer will be advised in writing that this employee is entitled to no more than a specified number of withholding allowances. Upon receipt of the notice the employer must withhold tax based on the specified number of allowances. In such a case the employer will be provided with two copies of the notice, one for the employer's records and one to be given to the employee. A separate notice will be mailed by the Tax Department to the employee.

If the employee files a new withholding certificate the employer may withhold on that basis only if the new certificate claims allowances not greater than the amount specified by the Tax Department.

If the employee wishes to file a new withholding certificate claiming a number of allowances greater than the number allowed by the Tax Department, the employee must detail either on the new certificate or in an attached statement any justification to support the claims. The employee may then submit the new certificate directly to the Tax Department or to their employer, who must then forward a copy to the Tax Department. The employer shall disregard the new certificate unless and until notified in writing by the Tax Department to withhold tax on the basis of the new certificate.

Definitions

The term "employer" as used herein includes anyone who is authorized by the employer to receive withholding tax certificates (Forms IT-2104 or IT-2104E), to make withholding computations, or to make payroll distributions.

Penalties Applicable to Employers

Penalties that may apply to employers for failure to comply with these regulations include, but are not limited to:

- a) The criminal penalties provided by Section 1801(a) for failure to supply information and Section 1806 for willful failure to collect withholding tax; and
- b) The civil penalties provided by Section 685(g), the 100% penalty for failure to collect and pay over tax and Section 685(i), an additional penalty up to \$1,000.

Penalties Applicable to Employees

Penalties that may apply to employees for failure to comply with these regulations include, but are not limited to:

- a) The criminal penalties provided by Section 1801(a) for failure to supply information and Section 1804(a) for filing a false return; and
- b) The civil penalties provided by Section 685(i), an additional penalty of up to \$1,000 and Section 685(s), a penalty of \$500 for making a false statement that decreases income tax withholding without a reasonable basis.

City of New York and City of Yonkers

These provisions also apply to the determination of withholding allowances for purposes of City of New York personal income tax on City of New York residents and City of Yonkers income tax surcharge on residents of Yonkers.