

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

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Income Tax
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Taxation of Employees of Interstate Rail Carriers,
Interstate Motor Carriers, Interstate Motor Private Carriers
and Interstate Air Carriers

Employees of Interstate Rail, Motor and Motor Private Carriers

General

Federal Public Law 101-322 amended various provisions of Title 49 of the United States Code relating to state and local taxation of compensation paid to employees of interstate rail carriers, interstate motor carriers and interstate motor private carriers. Since federal law takes precedence over state law, the new federal rules will apply for purposes of the New York State and New York City personal income taxes, the Yonkers personal income tax surcharge and the New York City and Yonkers nonresident earnings taxes. The changes, explained below, apply to compensation paid on or after July 6, 1990.

The new law provides that compensation paid by:

- (1) a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter I of Chapter 105 of Title 49 of the United States Code;
- (2) a motor carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under Subchapter II of Chapter 105 of Title 49 of the United States Code; or
- (3) a motor private carrier;

to an employee who performs regularly assigned duties in two or more states will be subject to state and local income taxes only in the employee's state of residence. Accordingly, if an employee of one of the above carriers is not a resident of New York State for income tax purposes under section 605(b)(1) of the New York State Tax Law and is paid compensation for regularly assigned duties performed in New York State and one or more other states, the compensation does not constitute income derived from New York State, New York City or Yonkers sources and is not subject to state or city taxes even though the employee performed services in New York State, New York City or Yonkers.

Change of Resident Status for Taxable Years Beginning After 1990

If the employee has a change of resident status during the year and is therefore a part-year resident for New York income tax purposes, the entire amount of compensation paid to the employee during the resident period must be included in New York source income (the numerator of the tax allocation fraction) and therefore is subject to New York State tax. The entire amount of compensation paid during the nonresident period is not included in New York source income and therefore is not subject to New York State tax. If the employee changes New York City or Yonkers resident status at the same time or at a different time than the state resident status changes, or if the employee has a change of city resident status only, the entire amount of compensation paid for the resident period will also be subject to the applicable city personal income tax, and no part of the compensation paid for the nonresident period will be subject to the applicable city nonresident earnings tax. To compute the state and city taxes for employees who have a change of state or city resident status during 1990, see Computation of New York State, New York City and Yonkers Taxes for 1990 below.

Withholding Tax

As a result of the new law, interstate rail, motor and motor private carriers should not withhold New York State, New York City or Yonkers taxes on compensation paid on or after July 6, 1990, to employees who are not residents of New York State, New York City or Yonkers but perform services in New York State and one or more other states. However, these employers are now required to withhold New York State income tax and, if applicable, New York City or Yonkers personal income taxes, on the entire amount of compensation paid on and after July 6, 1990, to an employee who is a resident of New York State and, if applicable, New York City or Yonkers.

Computation of New York State, New York City and Yonkers Taxes for 1990

Since the new federal law applies to compensation paid on or after July 6, 1990, an employee who was not a resident of New York State for any part of 1990, or was a part-year resident whose nonresident period included any part of the year prior to July 6, 1990, may still be subject to state and city taxes for 1990. Compensation paid to these employees prior to July 6, 1990, will be subject to New York State personal income tax and, if the employee performed services in New York City or Yonkers, the applicable nonresident earnings tax if the employee performed

services in New York State and one or more other states and more than 50% of the employee's annual compensation was earned in New York State.

Example: John Smith, an employee of an interstate rail carrier, was not a resident of New York State for any part of 1990. During 1990, John performed services in New York State (and New York City) and New Jersey. He determined that 60% of his services were performed in New York State and New York City in 1990. John was paid compensation of \$20,000 for the period January 1, 1990 - July 5, 1990, and \$25,000 for the period July 6, 1990 - December 31, 1990.

Since John earned more than 50% of his annual compensation in New York State in 1990, \$12,000 ($\$20,000 \times 60\%$) of the compensation paid to John for the period prior to July 6, 1990, is includable in New York source income and would be subject to New York State personal income tax. In addition, the \$12,000 would also be subject to the New York City nonresident earnings tax. However, pursuant to the new federal law, the \$25,000 of compensation paid on or after July 6, 1990, would not be subject to New York State or New York City taxes.

Employees of Interstate Air Carriers

The change in federal law does not apply to employees of interstate air carriers. An employee of these entities will be subject to New York State personal income and withholding tax if the employee is a resident of New York State, or if the employee is not a resident of New York State and more than 50% of the employee's compensation is earned within New York State. In addition, the employee will be subject to the New York City or Yonkers personal income taxes if the employee is a resident of either city, and will be subject to the New York City or Yonkers nonresident earnings tax if the employee is not a resident of either city but more than 50% of the employee's compensation is earned in either city.

For purposes of these provisions, more than 50% of the employee's compensation is considered earned in New York State, New York City or Yonkers if the employee's scheduled flight time in the state or city for the calendar year is more than 50% of the employee's total scheduled flight time for the calendar year.