

1994 Legislation
Taxation of Nonresident and Part-Year Resident Individuals

General

Chapter 170 of the Laws of 1994 amended various provisions of the New York State Tax Law relating to the computation of the New York State personal income tax for nonresidents and part-year residents. The general theory of taxing nonresidents and part-year residents remains intact (i.e., their tax is determined as if they were residents, and is then allocated to New York using the income percentage).

However, the computation of the numerator and denominator of the fraction¹ used to compute the income percentage has been changed. In addition, for part-year residents only, the computation of items of tax preference subject to the minimum income tax and the amount of a lump-sum distribution subject to the separate tax on lump-sum distributions have been changed. Furthermore, the special accruals required by a change of resident status have been consolidated, without substantive change, into one section of the Tax Law.

As a result of these changes, TSB-M-87-(13)I is valid only for tax years beginning after 1987 but before 1994. The following information should be used for tax years beginning after 1993.

Computation of Tax

The New York State personal income tax for nonresident and part-year resident individuals under section 601(e) of the Tax Law is computed in the following manner:

- 1) A tax is first computed under sections 601(a)-(d) of the Tax Law on the individual's New York taxable income, determined as if the individual were a resident of New York State for the entire tax year. The taxes under sections 601(a)-(d) consist of the regular tax and the tax table benefit recapture.

¹ Section 601(e) of the Tax Law refers to this fraction as the "New York source fraction." The result of this fraction is referred to in the forms and instructions as the "Income Percentage."

- 2) The tax computed in Step 1 is reduced by any applicable household credit, child and dependent care credit or earned income credit². These credits are also computed as if the taxpayer were a resident for the entire year. This figure is known as the base tax³.
- 3) The base tax is then multiplied by the income percentage. The income percentage is the percentage computed by dividing the individual's New York source income for the entire year by the individual's New York adjusted gross income for the entire year. The income percentage will be more than 100% when New York source income exceeds New York adjusted gross income. The income percentage is more fully explained below.
- 4) The amount computed in Step 3 is further reduced by any other New York State credits that the individual is entitled to, and increased by any other New York State taxes that the individual is liable for. The resulting figure is the New York State personal income tax for the year.

Income Percentage

For nonresidents and part-year residents, the numerator of the fraction used to compute the income percentage remains New York source income. However, the definition of New York source income has been changed to include the New York addition and subtraction modifications to federal adjusted gross income under section 612 of the Tax Law (section 612 modifications). The denominator of the fraction has been changed from federal adjusted gross income to New York adjusted gross income, computed as if the individual were a resident for the entire year. The following are detailed definitions of New York source income and New York adjusted gross income for nonresidents and part-year residents.

Nonresidents

The New York source income of a nonresident individual is defined under section 631 of the

² For a detailed explanation of the computation of the earned income credit for nonresidents and part-year residents, see TSB-M-94(8)I.

³ Section 601(e) of the Tax Law refers to this figure as the "Tax Base." However, this figure is referred to in the forms and instructions as the "Base Tax", and therefore that term will be used in this memorandum.

Tax Law as the net amount of items of income, gain, loss and deduction entering into federal adjusted gross income that is derived from New York sources. In addition, New York source income also includes the section 612 modifications that relate to items of income, gain, loss or deduction derived from New York sources. If an item included in the computation of federal adjusted gross income is partially derived from New York sources, the same portion of any section 612 modification which relates to the item is also derived from New York sources. For example, if 35% of a taxpayer's business income is derived from New York sources, 35% of any section 612 modification applicable to that income is also derived from New York sources.

An individual's New York adjusted gross income is the individual's New York adjusted gross income (which includes the section 612 modifications) computed as if the individual were a resident for the entire taxable year. Accordingly, the section 612 modifications are to be made at 100%.

Part-Year Residents

The New York source income of a part-year resident individual is defined in section 638(a) of the Tax Law as the sum of the following:

- 1) New York adjusted gross income for the period of residence, computed as if the tax year for federal income tax purposes were limited to the period of residence;
- 2) New York source income for the period of nonresidence, determined under section 631 of the Tax Law, as if the tax year for federal income tax purposes were limited to the period of nonresidence; and
- 3) those special accruals, required under section 639 of the Tax Law when individuals change their resident status, that relate to adjusted gross income.

The special accruals under section 639 that relate to adjusted gross income are required to be made not only in computing New York source income (the numerator of the income percentage) but also in computing New York adjusted gross income (the denominator of the income percentage). In addition, when a part-year resident individual computes the tax as if a resident, the individual's New York taxable income must include all of the special accruals required under section 639 of the Tax Law.

Note: As a result of these changes, the exceptions in computing the New York adjusted gross income and the base tax (tax as if a resident) for nonresident and part-year resident individuals, described in the Base Tax section of TSB-M-87-(13)1 no longer apply.

Minimum Income Tax and Separate Tax on Lump-Sum Distributions

Nonresidents

The method of computing the minimum income tax and separate tax on lump-sum distributions for nonresident individuals remains the same as under prior law. Accordingly, these individuals are only subject to tax on those items of tax preference or the amount of lump-sum distributions that are derived from New York sources.

Part-Year Residents

Minimum Income Tax

For a part-year resident, the amount of the items of tax preference subject to the minimum income tax is the sum of the following:

- 1) the federal items of tax preference for the period of residence, computed as if the tax year for federal income tax purposes were limited to the period of residence;
- 2) the federal items of tax preference for the period of nonresidence that are derived from New York sources, computed as if the tax year for federal income tax purposes were limited to the period of nonresidence;
- 3) any New York modifications related to the tax preference items computed in steps 1 and 2; and
- 4) the special accruals required under section 639 of the Tax Law, to the extent they relate to items of tax preference and associated modifications.

Separate Tax on Lump-Sum Distributions

For a part-year resident, the amount of a lump-sum distribution that is subject to the separate tax on lump-sum distributions is the sum of the following:

- 1) the ordinary income portion of a lump-sum distribution for the period of residence, computed as if the tax year for federal income tax purposes were limited to the period of residence;
- 2) the ordinary income portion of a lump-sum distribution for the period of nonresidence that is derived from New York sources, computed as if the tax year for federal income tax purposes were limited to the period of nonresidence;
- 3) any New York modifications related to the amounts determined in steps 1 and 2; and
- 4) the special accruals required under section 639 of the Tax Law, to the extent they relate to a lump-sum distribution and associated modifications.

Special Accruals for Part-Year Residents

A new section 639 has been added to the Tax Law to consolidate all of the special accrual rules relating to a change of resident status. As a result, the separate special accrual rules previously contained in section 601(e)(3) (part-year residents), section 636 (minimum income tax), section 637 (separate tax on lump-sum distributions) and section 638 (New York source income of a part-year resident) have been deleted.

The consolidated accrual rules are substantially the same as the prior rules, with one exception. The required accruals now include any New York modifications which relate to the items being accrued. The specific accrual rules for each change of resident status follow.

Change of Status from Resident to Nonresident

If an individual changes status from resident to nonresident, the individual must, regardless of the method of accounting employed, accrue to the period of residence:

- any items of income, gain, loss or deduction;
- any items of tax preference; and
- the ordinary income portion of a lump-sum distribution

accruing prior to the change of status. The accrual is required only if the item is not otherwise properly includable or allowable for New York income tax purposes for the resident period

or for a prior period under the individual's method of accounting. In addition, the individual must include in the resident period any New York modifications or adjustments that relate to items being accrued to federal adjusted gross income, itemized deductions, items of tax preference or a lump-sum distribution.

Change of Status from Nonresident to Resident

If an individual changes resident status from nonresident to resident, the individual must, regardless of the method of accounting employed, accrue to the **period of nonresidence**:

- any items of income, gain, loss or deduction;
- any items of tax preference; and
- the ordinary income portion of a lump-sum distribution

accruing prior to the change of status, **except for those items derived from New York sources**. The accrual is required only if the item is not otherwise properly includable or allowable for New York income tax purposes for the nonresident period or a prior tax year. In addition, the individual must include in the nonresident period any New York modifications or adjustments that relate to the items being accrued to federal adjusted gross income, itemized deductions, items of tax preference or a lump-sum distribution.

General Rules

No item of income gain, loss, or deduction; no item of tax preference; no ordinary income portion of a lump sum distribution and no related modification or adjustment which is accrued shall be taken into account in determining the individual's New York State personal income tax for any subsequent tax year.

The accruals required under section 639 will not be required if the individual files with the Tax Department a bond or other security acceptable to the Department. If a bond or other security is filed, the amounts accruable under section 639 must be taken into account in determining the individual's New York State tax in one or more subsequent years as if the individual had not changed resident status. For more information on accruals and filing a bond or other security, see TSB-M-86-(3)-I.

Examples

The following examples illustrate the revised method of computing the New York State personal income tax on nonresidents and part-year resident individuals in various situations.

Example 1: John Jones is a single individual and a nonresident of New York State. He earned wages of \$80,000 for the year, \$50,000 of which were earned in New York. John also had interest income from U.S. Government Bonds of \$2,000 and dividend income of \$1,500, none of which was derived from New York sources. John claims the New York standard deduction and has no dependents. His 1994 New York State tax is computed as follows:

| | <u>Federal</u> <u>Amount</u> | <u>NY State</u> <u>Amount</u> |
|--|---------------------------------|----------------------------------|
| Wages | \$80,000 | \$50,000 |
| Interest income | 2,000 | |
| Dividends | <u>1,500</u> | |
| Federal adjusted gross income | \$83,500 | \$50,000 |
| Less: NY subtraction for U.S. government interest.... | <u>2,000</u> | |
| New York adjusted gross income | \$81,500 | <u>\$50,000</u> |
| Less: New York standard deduction | <u>6,000</u> | |
| New York taxable income | \$75,500 | |
| | | |
| Base tax (from New York State tax table) | \$ 5,586.88 | |
| | | |
| Income percentage: $\frac{\$50,000}{\$81,500}$ | .6135 | |
| | | |
| New York State tax ($\$5,586.88 \times .6135$) | \$ 3,427.55 | |

Example 2: Fred and Mary Field are a nonresident married couple, they file a joint federal return and have two dependents. Fred has wages of \$40,000, earned entirely outside New York State. Mary is a partner in a partnership that conducts business both within and without New York State. Her federal K-1 shows a distributive share of partnership income of \$100,000, and the partnership notified her that 70% of that amount is income derived from New York sources. In addition, Mary's federal share of the New York City unincorporated business income tax deducted by the partnership is \$6,000. They elect to claim the New York standard deduction. Fred and Mary's 1994 joint New York State tax is computed as follows:

TSB-M-94 (9) I
Income Tax
February 24, 1995

| | Federal <u>Amount</u> | NY State <u>Amount</u> |
|---|--------------------------|---------------------------|
| Wages | \$ 40,000 | |
| Partnership income | <u>100,000</u> | <u>70,000</u> |
| Federal adjusted gross income | \$140,000 | \$70,000 |
| Add: addition for New York City UBT | 6,000 | |
| (\$6,000 X .70) | <u> </u> | <u>4,200</u> |
| New York adjusted gross income | \$146,000 | <u>\$74,200</u> |
| Less: New York standard deduction | <u>9,500</u> | |
| Balance | \$136,500 | |
| Less: New York dependent exemptions | <u>2,000</u> | |
| New York taxable income | \$134,500 | |
| | | |
| Base tax (from NY Tax Computation Worksheet I)..... | \$ 10,534.46 | |
| | | |
| Income percentage: $\frac{\$ 74,200}{\$146,000}$ | .5082 | |
| | | |
| New York State tax ($\$10,534.46 \times .5082$) | \$ 5,353.61 | |

Example 3: Jim Ford, a single individual, moved out of New York State on October 1, 1994. Jim files as a head of household for federal income tax purposes and has one dependent child. Jim is a salesperson and earned total commissions of \$55,000 for the year, \$48,750 of which were earned during the resident period. None of the \$6,250 of commissions earned during the nonresident period were from sales made in New York. His employment contract provides that he is to receive an annual bonus equal to 10% of his commissions for the year, payable on January 31 of the subsequent year. Since the amount of the bonus is fixed and determinable at the time Jim changed resident status, it is an accruable item for New York State purposes. Jim does not elect to file a bond or other security for the accruable item.

Jim also received during the resident period a New York State income tax refund (fully taxable for federal income tax purposes) of \$500; and interest income from non-New York municipal bonds during the year of \$2,000, \$1,500 of which was received during the resident period. He has New York itemized deductions of \$7,000 and is entitled to a federal child care credit of \$200. Jim's 1994 New York State head of household tax is computed as follows:

TSB-M-94 (9) I
Income Tax
February 24, 1995

| | Federal | NY State |
|--|---------------|---------------|
| | <u>Amount</u> | <u>Amount</u> |
| Sales commissions | \$55,000 | \$48,750 |
| New York State income tax refund | <u>500</u> | <u>500</u> |
| Federal adjusted gross income | \$55,500 | \$49,250 |
| Add: Accrued bonus (\$48,750 X .10) | 4,875 | 4,875 |
| Non-NY municipal bond interest | <u>2,000</u> | <u>1,500</u> |
| Total | \$62,375 | \$55,625 |
| Less: income tax refund | <u>500</u> | <u>500</u> |
| New York adjusted gross income | \$61,875 | \$55,125 |
| Less: New York itemized deduction | <u>7,000</u> | |
| Balance | \$54,875 | |
| Less: New York dependent exemption | <u>1,000</u> | |
| New York taxable income | \$53,875 | |
| | | |
| Tax on above from New York tax table | \$ 3,759.00 | |
| Less: New York child care credit (\$200 X .20) | <u>40.00</u> | |
| Base tax | \$ 3,719.00 | |
| | | |
| Income percentage: \$ 55,125 | .8909 | |
| \$ 61,875 | | |
| | | |
| New York State tax (\$3719 X .9071) | \$ 3,313.26 | |

If Jim Ford is required to file a New York State income tax return for 1995, he would not include in his New York adjusted gross income the \$4,875 of bonus income accrued to 1994. Although the \$5,500 (\$55,000 X .10) of bonus income received in 1995 would be included in his 1995 federal adjusted gross income, only \$625 (\$5,500 - \$4,875), the portion that Jim Ford did not accrue in 1994 for New York State tax purposes, would be included in his 1995 New York adjusted gross income.