

New York State Department of Taxation and Finance
Taxpayer Services Division
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Nonresident and Part-Year Resident Adjustments for Alimony

In Lunding v. New York Tax Appeals Tribunal (522 US ____, 139 LEd2d 717), the United States Supreme Court determined that section 631(b)(6) of the New York State Tax Law, concerning New York State's treatment of alimony paid by nonresidents, violates the Privileges and Immunities Clause of the United States Constitution and is therefore unconstitutional. Due to the decision, the Tax Department is issuing this guidance to nonresidents and part-year residents.

Nonresidents

Section 601(e) of the Tax Law imposes a personal income tax for each taxable year on a nonresident individual's taxable income derived from sources in New York State. The tax is equal to the tax computed as if the individual were a resident, reduced by certain credits and multiplied by the nonresident's income percentage. The income percentage is found on page 2 of New York State's *Nonresident and Part-Year Resident Income Tax Return* (Form IT-203) for tax years 1995 through 1998. The numerator of the fraction used to determine the income percentage is the individual's New York adjusted gross income from New York sources; the denominator used in the fraction is the individual's New York adjusted gross income from all sources.

Section 631(a) of the Tax Law provides that the New York adjusted gross income from New York sources includes the net amount of items of income, gain, loss and deduction entering into the individual's federal adjusted gross income that are derived from or connected with New York sources with any applicable New York State addition and subtraction modifications.

The amount of the federal alimony deduction allowed in computing New York adjusted gross income from New York sources (the numerator of the fraction used to compute the income percentage) is determined by multiplying the federal alimony deduction by a fraction (hereafter, the "alimony fraction"). The numerator of the alimony fraction is federal total income from New York State sources, and the denominator of the fraction is federal total income from all sources. Federal total income is the amount called "total income" on page 1 of the Federal Form 1040. The numerator for the alimony fraction can be obtained from line 16 on Form IT-203 in the column headed "New York State Amount" for tax years 1995 through 1998. The denominator can be found at line 16 in the column headed "Federal Amount."

Example 1: A nonresident files as a single individual with income of (a) \$60,000 in wages, \$50,000 of which are earned in New York; (b) \$1,000 in interest income, none of which is attributable to New York sources; and (c) a \$500 New York State income tax refund.¹ The person made alimony payments of \$2,400 in the same year. Thus, federal total income from all sources is \$61,500 (\$60,000 in wages, \$1,000 in interest

¹Though such an income tax refund is entirely from New York State, it is not considered New York source income under the Tax Law.

and \$500 from the New York State income tax refund) and federal total income from New York sources is \$50,000 (the wages earned in New York), so that the alimony fraction is $\$50,000/\$61,500$. The person's federal adjusted gross income is \$59,100 ($\$61,500 - \$2,400$ in alimony payments), and his or her New York adjusted gross income from all sources (the denominator of the fraction used to determine the income percentage) is \$58,600 ($\$59,100 - \500 for the state income tax refund). In order to determine the amount of the person's alimony deduction included in determining the person's New York adjusted gross income from New York sources (the numerator of the fraction), the \$2,400 in alimony payments of the nonresident are multiplied by the alimony fraction as follows:

$$\begin{array}{l} \text{Portion of alimony attributable to} \\ \text{New York sources} \end{array} = \$50,000/\$61,500 \times \$2,400 = \$1,951$$

The person's resulting New York adjusted gross income from New York sources is \$48,049 ($\$50,000 - \$1,951$).

Filing Jointly

If a husband and wife are filing a joint New York State nonresident return, the amount of the federal alimony deduction allowed in computing New York adjusted gross income from New York sources is based upon a jointly computed alimony fraction. The numerator of the alimony fraction is the federal total income from New York sources of both spouses, and the denominator of the fraction is federal total income from all sources for both spouses. This fraction is applied to the total alimony paid by both spouses and is used even if the alimony is paid only by the spouse who has no New York source income.

Example 2: A nonresident couple files a joint nonresident return showing (a) \$80,000 in salary for the wife, all of which was earned in New York; (b) \$25,000 in pension income for the husband who is over the age of 59 1/2;² (c) \$10,000 of dividends and interest, none of which is attributable to New York; and (d) a \$12,000 alimony deduction attributable to alimony paid by the husband. Thus, this couple has federal total income from all sources of \$115,000 (\$80,000 in salary, \$25,000 in periodically paid pension income, and \$10,000 in interest and dividends) and federal total income from New York sources of \$80,000 (the wages earned entirely in New York), so that the alimony fraction is $\$80,000/\$115,000$. The couple's federal adjusted gross income from all sources is \$103,000 (the $\$115,000 - \$12,000$ in alimony payments). Because

²Even though all or a portion of this pension may be attributable to income earned in New York, none of it is considered New York source income because federal law prohibits a state's taxation of pension income of a nonresident.

in this example the couple may make a \$20,000 subtraction modification from federal adjusted gross income from all sources for the husband's pension in order to compute New York adjusted gross income from all sources, this couple's New York adjusted gross income from all sources (the denominator of the fraction used to compute the income percentage) is \$83,000 (\$103,000-\$20,000). In order to determine the amount of the couple's alimony deduction included in determining New York adjusted gross income from New York sources (the numerator of the fraction used to determine the income percentage), the \$12,000 in alimony payments of the couple are multiplied by the alimony fraction as follows:

$$\begin{array}{l} \text{Portion of alimony attributable} \\ \text{to New York sources} \end{array} = \$80,000/\$115,000 \times \$12,000 = \$8,348$$

The couple's resulting New York adjusted gross income from New York sources is \$71,652 (\$80,000 - \$8,348).

Part-Year Residents

If a part-year resident pays alimony, the amount of the federal alimony deduction allowed in computing New York adjusted gross income from New York sources (the numerator of the Fraction used to determine the income percentage) is determined by multiplying the amount of the federal alimony deduction by an alimony fraction determined as follows. The numerator of the fraction is the sum of the part-year resident's federal total income from all sources received in his or her period of residence plus his or her federal total income from New York sources received in his or her period of nonresidence. The denominator of the fraction is his or her federal total income from all sources received during the entire tax year. Both of the amounts for the denominator and the numerator can be found on line 16 of Form IT-203 for tax years 1995 through 1998.

Example 3: A resident taxpayer makes one \$1,000 alimony payment during the first three months of a tax year. The taxpayer then moves and establishes residence in another state, after which he or she pays \$9,000 of alimony for a total of \$10,000 in payments for the year. For the same tax year, the taxpayer files a part-year resident return with \$80,000 of federal total income from all sources, \$15,000 of which, including a \$1,000 New York State income tax refund, was received in the period of residence. Of the \$65,000 received in the period of nonresidence, \$45,000 was attributable to New York sources. Thus, the taxpayer has federal total income from New York sources (the numerator of the alimony fraction) of \$60,000 (\$15,000 plus \$45,000), so that the alimony fraction is \$60,000/\$80,000. The person's federal adjusted gross income from all sources is \$70,000 (\$80,000 - \$10,000 in alimony). Assuming that there are no New York modifications to be made—except for a \$1,000 subtraction for the state income tax refund received in the part-year period of New York residence-- the person's New York adjusted gross income from all sources (the denominator of the Fraction used

to determine the income percentage) is \$69,000 (\$70,000-\$1,000). In order to determine the taxpayer's New York adjusted gross income from New York sources (the numerator of the Fraction used to determine the income percentage) the \$10,000 federal alimony deduction is multiplied by the alimony fraction as follows:

$$\begin{array}{l} \text{Portion of alimony} \\ \text{attributable to} \\ \text{New York sources} \end{array} = \$60,000/\$80,000 \times \$10,000 = \$7,500$$

The person's resulting New York adjusted gross income from New York sources is \$51,500 (\$60,000-\$7,500 in alimony -\$1,000 for the state income tax received while a resident).

Effect of the Lunding Decision on Other Federal Adjustments to Total Income

Other than the alimony deduction, no federal adjustments to federal total income are affected by the decision in Lunding.

Application of the Allocation Methods in this TSB-M to Previous Tax Years

The allocation methods in this TSB-M may be applied to all previous tax years that are open under the statute of limitations.