



Department of Taxation and Finance

Important:

The New York City nonresident earnings tax was eliminated for New York State nonresidents on or after July 1, 1999 as the result of a New York State Court of Appeals decision. Accordingly, this TSB-M cannot be relied upon for issues related to the nonresident earnings tax on or after July 1, 1999.

For information concerning other nonresident income taxes, see [Filing information for New York State nonresidents \(ny.gov\)](#).

[See *City of New York, et al., v. State of New York, et al.*, NY Court of Appeals, 94 NY2d 577, 709 NYS2d 122; Chapter 5 of the Laws of 1999.]

The TSB-M begins on page 2 below.

Important Notice

Employer Withholding Requirement for New York City Nonresident Earnings Tax Eliminated for New York State Resident Individuals, Effective July 1, 1999

Governor Pataki recently signed legislation that eliminates the New York City nonresident earnings tax for New York State residents who are not residents of the city of New York but who earn wages or carry on a trade or business in the city of New York. The new law is effective July 1, 1999.

With the elimination of the nonresident earnings tax on these individuals comes the elimination of the requirement for employers to withhold New York City nonresident earnings tax on wages paid to these individuals. Accordingly, effective for the first payroll made on or after July 1, 1999, an employer should not withhold New York City nonresident earnings tax from the wages of an employee who resides **outside** the city of New York but **within** New York State.

Employees hired before July 1, 1999

For employees who were hired before July 1, 1999, the employer may use one of the following guidelines to determine which employees are no longer subject to New York City nonresident earnings tax withholding effective July 1, 1999:

- the employee's home address shown on the employer's withholding or other tax records is outside the city of New York but within New York State, **or**
- the employer has on file for the employee Form IT-2104.2, *City of New York Certificate of Nonresidence*, but as of July 1, 1999 does not have on file for the employee Form IT-2104.1, *New York State Certificate of Nonresidence and Allocation of Withholding Tax*, **or**
- the employee submits new Form NYC-2104-E, *City of New York Certificate of Exemption from Nonresident Earnings Tax Withholding*, which certifies the employee's home address is located outside the city of New York but within New York State.

Employees hired on or after July 1, 1999

Employees hired on or after July 1, 1999, who reside outside the city of New York but within New York State and who expect to earn wages for services performed in the city of New York must complete, sign and submit to their employer a new Form NYC-2104-E to be exempt from withholding of New York City nonresident earnings tax.

Nonresidents of New York State who perform services in the city of New York

Employees who reside outside both the city of New York and New York State, and who earn wages for services performed in the city of New York, are still subject to New York City nonresident earnings tax. Employers are required to withhold New York City nonresident earnings tax on wages paid to these individuals based on the percentage of services estimated to be performed within the city of New York during the year as reflected on the employee's Form IT-2104.2.

Employee change of status

If the employer discontinues withholding New York City nonresident earnings tax and the employee subsequently files Form IT-2104.1 with the employer (indicating that he or she is no longer a New York State resident), the employer must begin withholding New York City nonresident earnings tax if the employee is working in New York City.

If an employee who did not qualify for exemption from withholding as of July 1, 1999 (or on the date he or she was hired, if later) subsequently qualifies to be exempt from withholding, the employee must submit Form NYC-2104-E to his or her employer. Upon receiving this form, the employer must discontinue withholding the city nonresident earnings tax.

Forms and assistance

Form NYC-2104-E may be obtained:

- from the Tax Department's website at www.tax.state.ny.us. In addition, this notice, other New York forms, publications, and other tax information are also available on the Department's website.
- by using the Tax Department's fax-on-demand system. The fax-on-demand ordering system may be accessed 24 hours a day, seven days a week, by calling 1 800 748-3676. The system allows callers to order forms from any Touch-tone phone by entering a special five-digit code number assigned to the form. New Form NYC-2104-E can be ordered by entering the five-digit code 15031. The system will transmit to any fax machine having a three-digit area code.
- by calling the Tax Department's forms order number at 1 800 462-8100.
- by writing to:
New York State Tax Department
Taxpayer Assistance Bureau
W A Harriman Campus
Albany, NY 12227

If you need additional Forms NYC-2104-E, you may order them from the Tax Department or, if you prefer, you may photocopy them.

If you need assistance or have additional questions, call the Department's Business Tax Information Center toll free from anywhere in the U.S. and Canada at 1 800 972-1233 or 1 800 225-5829. From areas outside of the U.S. and Canada, call (518) 485-6800.