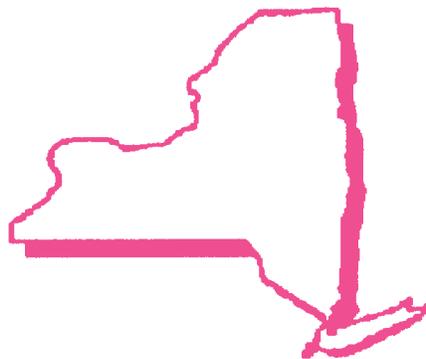


GENERAL INCOME TAX INFORMATION FOR NEW YORK STATE RESIDENTS

For tax year 2011



The information presented is current as of this publication's print date. Visit our Web site at www.tax.ny.gov for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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Introduction

This publication provides general information for taxpayers who are required to file a New York State resident income tax return. You may be required to file a resident income tax return if you were a full-year New York State resident and received income during the tax year or you would like to claim certain tax credits.

You may be considered a resident for New York State income tax purposes and be required to file a resident income tax return even if you are not considered a resident of New York State for other purposes. To determine whether or not you are considered a New York State resident for income tax purposes, you must consider where your domicile was and where you maintained a permanent place of abode during the tax year (see *Definitions* below and *Filing requirements for New York State full-year residents* on page 8).

Taxpayers who are New York State full-year residents for income tax purposes must use Form IT-201, *Resident Income Tax Return*.

You may also report the amount of New York State and local sales and use tax that you owe, if any, on your Form IT-201. For information on filing and paying sales and use tax, see *Sales or use tax* on page 26.

The Marriage Equality Act

The Marriage Equality Act (Act) was signed into law as Chapters 95 and 96 of the Laws of 2011, on June 24, 2011. One purpose of the Act is to provide that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under all laws of the state. Accordingly, the Act applies to all taxes administered by the Tax Department as of July 24, 2011.

For purposes of this publication, the term *spouse* should be read as gender-neutral and includes a person in a marriage with a same-sex spouse.

Definitions

The following definitions apply in determining whether or not you are a New York State resident for income tax purposes.

Domicile

In general, your *domicile* is the place you intend to have as your permanent home. Your domicile is, in effect, where your permanent home is located. It is the place you intend to return to after being away (as on vacation abroad, business assignments, educational leave, or military assignment).

You can have only one domicile. Your New York domicile does not change until you can demonstrate that you have abandoned your New York domicile and established a new domicile outside New York State.

A change of domicile must be *clear and convincing*. Easily controlled factors such as where you vote, where your driver's license and registration

are issued, or where your will is located, are **not** the primary factors in establishing domicile. To determine whether you have, in fact, changed your domicile, you should compare:

- the size, value, and nature of use of your first residence to the size, value, and nature of use of your newly acquired residence;
- your employment and/or business connections in both locations;
- the amount of time spent in both locations;
- the physical location of items that have significant sentimental value to you in both locations; and
- your close family ties in both locations.

A change of domicile is *clear and convincing* only when your primary ties are clearly **greater** in the new location. When weighing your primary ties, keep in mind that some may weigh more heavily than others, depending on your overall lifestyle. If required by the Tax Department, it is your responsibility to produce documentation showing the necessary intention to change your domicile.

If you move to a new location but intend to stay there only for a limited amount of time (no matter how long) for work, school, or any other purpose, your domicile does not change.

If your domicile is New York State and you go to a foreign country because of a business assignment by your employer, or for study, research, or any other purpose, your domicile does not change unless you can show that you definitely do not intend to return to New York State.

Permanent place of abode

In general, a permanent place of abode is a residence (a building or structure where a person can live) that you permanently maintain, whether you own it or not, that is suitable for year-round use. A permanent place of abode usually includes a residence your spouse owns or leases.

However, a residence maintained by a full-time student enrolled at an institution of higher education in an undergraduate degree program leading to a baccalaureate degree and occupied by the student while attending the institution is not a permanent place of abode with respect to that student.

For additional information, visit our Web site.

Note: Special rules apply to military personnel and their spouses. See Publication 361, *New York State Income Tax Information For Military Personnel and Veterans*.

Resident

You are a New York State resident for income tax purposes if:

- Your domicile is not New York State but you maintain a permanent place of abode in New York State for more than 11 months and spend **184 days or more** (a part of a day is a day for this purpose) in New York State during the tax year. However, if you are a member of the armed forces, and your domicile is not New York State, you are not a resident under this definition. Also, if you are a military spouse domiciled in another state, but located in New York State solely to be with your spouse (who is a member of the armed services present in New York State in compliance with military orders), you are not considered a resident under this definition (see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*).

or

- Your domicile is New York State. However, even if your domicile is New York State, you are not a resident if you meet **all three** of the conditions in either Group A or Group B as follows:

Group A

1. You did not maintain any permanent place of abode in New York State during the tax year; and
2. You maintained a permanent place of abode outside New York State during the entire tax year; and
3. You spent **30 days or less** (a part of a day is a day for this purpose) in New York State during the tax year.

Group B

1. You were in a foreign country for at least 450 days (a part of a day is a day for this purpose) during any period of 548 consecutive days; and
2. You, your spouse (unless legally separated), and minor children spent **90 days or less** (a part of a day is a day for this purpose) in New York State during this 548-day period; and
3. During the nonresident portion of the tax year in which the 548-day period begins, and during the nonresident portion of the tax year in which the 548-day period ends, you were present in New York State for no more than the number of

days which bears the same ratio to 90 as the number of days in such portion of the tax year bears to 548. The following formula illustrates this condition:

$$\frac{\text{Number of days in the nonresident portion}}{548} \times 90 = \text{Maximum days allowed in New York State}$$

Note: In determining your resident status for income tax purposes, your presence in New York does not count as a day or part of a day when determining your total days in New York, if any of the following apply:

1. You travel to New York for the sole purpose of boarding a plane, ship, train, or bus for a destination outside New York State.
2. You are continuing travel that began outside of New York State that takes you through the state by automobile, plane, ship, train, or bus, to a destination outside New York State.
3. You are seeking treatment for an illness at a New York medical facility or are confined to a New York nursing home facility.

Nonresident

You are a New York State nonresident if you were not a resident of New York State for any part of the year.

Part-year resident

You are a New York State part-year resident if you meet the definition of resident or nonresident for only part of the year.

Filing requirements for New York State full-year residents

You must file Form IT-201, *Resident Income Tax Return*, if you meet any of the following conditions:

- You have to file a federal return.
- You did not have to file a federal return but:
 - Your federal filing status would have been single, you can be claimed as a dependent on another taxpayer's federal return, **and** you had federal adjusted gross income plus New York additions of more than \$3,000.
 - Your federal filing status would have been single, you cannot be claimed as a dependent on another taxpayer's federal return, **and** you had federal adjusted gross income plus New York additions of more than \$4,000.
 - Your federal filing status would have been married filing joint return, married filing separate return, head of household, **or**

qualifying widow(er) **and** you had federal adjusted gross income plus New York additions of more than \$4,000.

For information on determining your filing status, see *Filing status* on page 11. New York additions are explained in the instructions for Form IT-201. To compute your federal adjusted gross income, see the instructions for federal Form 1040, *U.S. Individual Income Tax Return*.

- You want to claim a refund of any New York State, New York City, or Yonkers income taxes withheld from your pay.
- You are subject to the minimum income tax.
- You are subject to the separate tax on lump-sum distributions.
- You want to claim certain New York State, New York City, or Yonkers income tax credits (see *New York State and New York City income tax credits* on page 13).

Note: The real property tax credit and the New York City school tax credit can be claimed by certain individuals not required to file a New York State personal income tax return.

**New York City
income tax and
Yonkers resident
income tax
surcharge**

For the definition of a New York City or Yonkers resident, nonresident, and part-year resident, see the definitions of a resident, nonresident, and part-year resident beginning on page 7, and substitute *New York City* or *Yonkers* in place of *New York State*.

**New York City
resident tax**

If you were a resident of New York City for the tax year and you have to file a New York State return, report your New York City income tax on your state return.

**Yonkers resident
income tax surcharge**

If you were a resident of Yonkers for the tax year and you have to file a New York State return, report your Yonkers resident income tax surcharge on your state return.

**Yonkers nonresident
earnings tax**

If you were a New York State resident and were not a Yonkers resident, but earned wages or carried on a trade or business in Yonkers, you are subject to the Yonkers nonresident earnings tax. You must compute your Yonkers nonresident earnings tax on Form Y-203, *Yonkers Nonresident Earnings Tax Return*, and attach it to your Form IT-201. If you are married, you cannot file jointly on Form Y-203. If you and your spouse each have separate taxable Yonkers earnings, you must each complete a separate Form Y-203.

**Part-year residents of
New York City and
Yonkers**

If you changed your New York City or Yonkers resident status during the year, you must complete Form IT-360.1, *Change of City Resident Status*, and pay New York City resident tax or Yonkers resident income tax surcharge for the part of the year that you lived in New York City or Yonkers. If you are required to file Form IT-360.1, attach it to your Form IT-201.

**Filing
requirements for
New York State
part-year residents**

If you were a New York State resident for only part of the year, you are a New York State part-year resident. Part-year residents must file Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. You are subject to New York State tax on income you received from New York State sources while you were a nonresident, and on all income you received while you were a New York State resident.

For more information, visit our Web site.

**Form IT-201,
*Resident Income
Tax Return***

Use Form IT-201 if you are a full-year New York State resident.

You can claim the following tax credits directly on Form IT-201:

- New York State household credit,
- New York City household credit,
- Empire State child credit,
- New York State child and dependent care credit,
- New York City child and dependent care credit,
- New York State earned income credit,
- Noncustodial parent New York State earned income credit,
- New York City earned income credit,
- Real property tax credit,
- College tuition credit,
- New York City school tax credit, and
- Resident credit.

If you are claiming any credits other than those listed above, or you are subject to other New York State or New York City taxes, you must

complete Form IT-201-ATT, *Other Tax Credits and Taxes*, and attach it to your Form IT-201 (see *New York State and New York City income tax credits* on page 13).

Filing status

One of the most important items on your New York State income tax return is your **filing status**. This classification helps determine whether you have to file a return, and, if you claim the New York standard deduction, determines which standard deduction amount you use. Your filing status also helps determine your tax.

Generally, you will use the same filing status that you used on your federal return. If you did not have to file a federal return, use the filing status you would have used for federal income tax purposes. However, there are certain exceptions to these rules (see *Married individuals* below).

If you file a joint return, both you and your spouse are generally responsible for the tax and any interest or penalties due on the return. This means that if one spouse does not pay the tax due, the other may have to. However, see *Innocent spouse relief* on page 23.

For information on the federal filing status that applies to you, visit the Internal Revenue Service (IRS) Web site (www.irs.gov) or call 1 800 829-1040.

Married individuals

Married individuals who file a joint federal return are not required to file a joint New York State return if:

1. One spouse is a New York State resident and the other is a nonresident or part-year resident. In this case, you must either: (a) file separate New York returns using filing status *Married filing separately*; or (b) file jointly, as if you both were New York State residents, using filing status *Married filing jointly*.
2. You are unable to file a joint New York return because the address or whereabouts of your spouse is unknown, you can demonstrate that reasonable efforts have been made to locate your spouse, and good cause exists for the failure to file a joint New York return. In this case, you may file a separate New York return using filing status *Married filing separately*.
3. Your spouse refuses to sign a joint New York return and:
 - reasonable efforts have been made to have your spouse sign a joint return;
 - there exists objective evidence of alienation from your spouse such as a judicial order of protection, legal separation under a

decree of divorce or separate maintenance, or living apart for the twelve months immediately preceding application to file a separate return or commencement of an action for divorce or commencement of certain family court proceedings; and

- good cause exists for the failure to file a joint New York return.

In this case, you may file a separate New York return using filing status *Married filing separately*.

Same-sex married couples. If you are married as of the last day of the tax year, you must use a married filing status and you must enter special condition code *M3* at item (G) on your 2011 New York return (see the instructions for Form IT-201).

Since a same-sex married couple may not file a federal return using a married filing status, and federal adjusted gross income is the starting point for computing your New York return, you will need to re-compute your federal income tax return as if you had been able to use a married filing status (*federal as-if-married return*). Complete your *federal as-if-married return* (including all supporting federal schedules, credit forms, and other attachments), applying all the federal rules for the married filing status you choose. Do not file your *federal as-if-married return*; keep it for your records.

Itemized deductions or standard deduction

You may pay less tax if you can itemize your deductions, because, unlike the standard deduction, your itemized deduction is not limited to any specific dollar amount. However, you can itemize your deductions only if you itemized deductions on your federal Form 1040.

The starting point in computing your New York itemized deduction amount is your federal itemized deductions from federal Schedule A, *Itemized Deductions*. However, differences between federal and New York State tax law make it necessary to make certain adjustments to your federal itemized deductions in computing your New York State itemized deduction. So, even though you itemized on federal Form 1040, it is possible that your tax will be less if you claim the standard deduction on your New York State return. See the instructions for Form IT-201 to determine which deduction to claim.

The standard deduction is a fixed amount, based on your filing status, that reduces your New York adjusted gross income. If you do not itemize your deductions, you can take the standard deduction. The New York standard deduction for tax year 2011 is:

• Single and can be claimed as a dependent	\$ 3,000
• Single and cannot be claimed as a dependent	\$ 7,500
• Married filing joint return	\$15,000
• Married filing separate return	\$ 7,500
• Head of household	\$10,500
• Qualified widow(er)	\$15,000

If you are married and filing separate returns, both spouses must take the standard deduction unless both of you itemized deductions on your federal returns and both of you elected to itemize deductions on your New York State returns.

**New York State
and
New York City
income tax credits**

You may be able to reduce your income tax liability by claiming certain tax credits. Individuals who do not owe any income tax may qualify to claim a refund of certain credits. Although the New York State Tax Law conforms generally to the federal tax law, New York State tax credits are different from federal credits. New York State taxpayers may claim only those credits that are specifically allowed by the New York State and New York City personal income tax laws.

The real property tax credit and the New York City school tax credit can be claimed by certain individuals who are not required to file a New York State personal income tax return.

To claim any of the following New York State or New York City income tax credits, you must complete the appropriate credit claim form and file Form IT-201 with attachment Form IT-201-ATT, *Other Tax Credits and Taxes*:

- Accumulation distribution credit;
- Alternative fuels credit (carryover of credit only);
- Automated external defibrillator credit;
- Biofuel production credit;
- Brownfield credits (brownfield redevelopment tax credit, remediated brownfield credit for real property taxes, and environmental remediation insurance credit);
- Claim of right credit;

- Clean heating fuel credit;
- Conservation easement tax credit;
- Credit for New York City unincorporated business tax;
- Economic transformation and facility redevelopment program tax credit;
- Empire State commercial production credit;
- Empire State film production credit;
- Empire State film post-production credit;
- Empire Zone (EZ) credits (EZ capital tax credit, EZ wage tax credit, EZ investment tax credit and EZ investment tax credit for the financial services industry, EZ employment incentive credit, and EZ employment incentive credit for the financial services industry);
- Employment of persons with disabilities credit;
- Employment incentive credit and employment incentive credit for the financial services industry;
- Farmers' school tax credit;
- Fuel cell electric generating equipment credit (carryover of credit only);
- Green building credit;
- Credit for taxicabs and livery service vehicles accessible to persons with disabilities;
- Historic barn rehabilitation credit;
- Historic homeownership rehabilitation credit;
- Investment tax credit and investment credit for the financial services industry;
- Long-term care insurance credit;
- Low-income housing credit;

- Nursing home assessment credit;
- Qualified empire zone enterprise (QEZE) credits (QEZE credit for real property taxes and QEZE tax reduction credit);
- Qualified emerging technology company (QETC) credits (QETC capital tax credit, QETC employment credit, and QETC facilities, operations, and training credit);
- Rehabilitation of historic properties credit;
- Security officer training tax credit;
- Special additional mortgage recording tax credit;
- Solar energy system equipment credit; and
- Volunteer firefighters' and ambulance workers' credit.

For more information on income tax credits, visit our Web site.

Temporary deferral of certain tax credits

Effective for tax years beginning on or after January 1, 2010, and before January 1, 2013, certain tax credits will be subject to a temporary deferral in any tax year that the total amount of those credits that would otherwise be used to reduce the your tax liability or be refunded or credited as an overpayment to estimated tax is in excess of \$2 million.

You will be allowed to claim the deferred credit amounts starting with tax years beginning on or after January 1, 2013. No interest will be paid on the deferred credit amounts.

For more information, see TSB-M-10(5)C, (11)I, *Temporary Deferral of Certain Tax Credits*.

Estimated income tax requirements

New York State Tax Law requires you to pay income tax during the year, either through withholding or estimated tax.

You may have to pay estimated tax if:

- you are self-employed,
- you receive a taxable pension or annuity, or
- you receive any other income from which taxes are not withheld.

If you have substantially underpaid your taxes during the year (either through insufficient estimated tax payments, or insufficient withholding

tax, or a combination of the two), you will probably have to pay a penalty in addition to your tax.

Generally, you must pay estimated income tax if you expect to owe, after subtracting your tax withheld and credits, at least \$300 of either New York State, New York City, or Yonkers income tax, and you expect your withholding and credits to be less than the smaller of:

- 90% of the personal income tax shown on your 2011 return; or
- 100% of the personal income tax shown on your 2010 return (110% of that amount if you are not a farmer or fisherman and the New York adjusted gross income on that return is more than \$150,000 or, if married filing separately for 2011, more than \$75,000), based upon a return covering 12 months.

You should not include in your estimate any amount of sales or use tax you expect to owe on your personal income tax return.

If you are married, each spouse should maintain a separate estimated income tax account. If you and your spouse each maintain an estimated tax account and file a joint New York State income tax return, the balances of both accounts will be credited to your joint income tax return.

For more information see Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals*, and Form IT-2105-I, *Instructions for Form IT-2105*.

Note: You can make estimated tax payments, check your balance, and reconcile your estimated income tax account online on our Web site.

Residents working outside New York State

If you are a resident of New York State, all of your income, regardless of where it is earned, is taxable to New York State. If you have income from which no taxes are withheld during the year, you may be required to pay estimated tax. For example, if you are employed outside of New York State, your employer may not withhold New York State tax (or New York City or Yonkers tax) from your wages. For additional information, see *Estimated income tax requirements* on page 15.

If any part of your income is taxed by another state, a local government within another state, the District of Columbia, or a Canadian province, you may be allowed a credit against your New York State income tax. The credit is allowable only for the part of the tax that applies to income received in the other taxing authority while you were a New York State resident.

To claim this credit, you must complete Form IT-112-R, *New York State Resident Credit*, and, if applicable, Form IT-112-C, *New York State Resident Credit for Taxes Paid to a Province of Canada*, and attach either, or both, forms to your Form IT-201. For additional information regarding this credit, see the instructions for Form IT-112-R and Form IT-112-C.

When to file

You should file your 2011 income tax return and pay any amounts you owe as soon as you can after January 1, 2012, but not later than April 17, 2012. If you file late, you may have to pay interest and penalties (see pages 24 and 25). If you file for a fiscal year, your return is due by the fifteenth day of the fourth month following the end of your fiscal year.

Automatic six-month extension of time to file

If you cannot meet the filing due date, you may request an extension of time to file by:

- using our Web site to Web file your extension request for free;
- using tax preparation software (check your software package to see if you have the option to e-file your request for an extension);
- filing Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*; or
- using a paid tax preparer to file an extension for you.

Note: If the paid tax preparer will also be preparing your personal income tax return and he or she is required to e-file that return, the preparer must e-file your extension request.

The filing due date for your income tax return will be automatically extended for six months if you file your request for an extension on or before the due date of your return and pay any income tax due with your request. You must also pay any sales or use tax you owe at the time you request the extension.

An extension of time to file does not extend your time to pay. Depending on the filing method you choose, you may pay by check, money order, electronic funds withdrawal, or credit card.

You must estimate your New York State, New York City, and Yonkers income taxes due, but be as exact as you can with the information you have (see *Estimated income tax requirements* on page 15). If we later determine that your estimate was not reasonable, the extension will not be allowed, and you may be subject to penalty and interest.

To file your New York State extension online and learn about payment options, visit our Web site.

Automatic two-month extension

If you qualify for an automatic two-month extension of time to file your 2011 federal income tax return because:

1. you are a U.S. citizen or a U.S. resident living outside the U.S. and your main place of business or post of duty is outside the U.S. and Puerto Rico, or
2. you are in military service outside the U.S. and Puerto Rico when your return is due,

you are entitled to a similar two-month extension to file your state return. The time to pay your New York State, New York City, and Yonkers income tax and any state or local sales or use tax is similarly automatically extended. However, even if you qualify for the automatic two-month extension of time to file your New York return, interest will be charged on income tax not paid before the due date, determined without regard to any extension of time. Interest is a charge for the use of money and in most cases may not be waived.

If you are serving or did serve in a combat zone or certain other designated areas, you may qualify for additional extensions of time to file your return. For more information on extensions of time to file and other tax relief for military personnel, see Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*.

If you cannot file on or before the end of this automatic two-month extension, request an extension of time to file (see *Automatic six-month extension of time to file* on page 17) and pay any tax due with it to receive an additional four months to file.

Automatic extension for death of a spouse

If your spouse dies within 30 days prior to the due date for filing your personal income tax return or paying the tax due on that return, the department will grant you an automatic extension of 90 days to file your income tax return and to pay the tax due on the return. No penalties or interest for late filing or late payment will be imposed during this 90-day extension period.

- If you file a paper return, you must enter the decedent's date of death in the space provided and enter **D9** in the special condition code box provided on the front page of the New York State personal income tax return.
- If you e-file your return, you must enter the decedent's date of death in the space provided and enter **D9** in the special condition code box. If the tax preparation software does not support a special condition

code, the return should be filed on paper following the instructions for a paper return.

Electronic tax filing (e-file)

New electronic filing mandate for individuals. Effective for tax returns filed on or after January 1, 2012, if you prepare your personal income tax return using tax software, you are generally required to file electronically (e-file). A taxpayer who is required to e-file and fails to do so will be subject to a penalty and will not be eligible to receive interest on any overpayment until the return is filed electronically. For additional information, visit our Web site.

You can e-file your income tax return using your personal computer and an approved commercially available software package, or you can choose to have a tax professional e-file for you.

If you choose to use a tax professional, ask the preparer if he or she is authorized to e-file your income tax return. Any tax professional who can e-file federal tax returns is authorized to e-file New York tax returns, as long as he or she is using software that has been approved for the New York e-file program. Visit the IRS Web site (www.irs.gov) to help you find an authorized tax professional or tax preparation business near you.

E-filing is the fastest way to receive your refund. The speed and accuracy of computers allow electronic returns to be processed faster than paper returns, and using tax preparation software greatly reduces the possibility of errors and delays. To receive your refund even faster, you may choose to have it deposited directly into your savings or checking account (see *Direct deposit of refunds* on page 20).

E-file is faster and more accurate than paper filing, and, if you qualify, it may be free. Several tax preparers and tax preparation software providers offer free or discounted e-filing.

You may pay a balance due on an e-filed return by submitting a check or money order with Form IT-201-V, *Payment Voucher for E-Filed Income Tax Returns*; by using your credit card; or by authorizing the Tax Department to withdraw the payment from your bank account (electronic funds withdrawal). You must include authorization and account information for electronic funds withdrawal with your electronic return, and you cannot change it once it is transmitted. To avoid interest and penalties, your check or money order must be mailed, your credit card payment authorized, or your electronic funds withdrawal made, by the filing due date.

For more information on e-file, and a complete list of forms that can be e-filed, visit our Web site.

Payment options

If you have a balance due on your return, you may pay by check or money order. You may also pay a balance due by using your credit card or by electronic funds withdrawal. For specific information on payment options, see the instructions for the tax form or tax preparation software you are using.

Note: The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department will not charge the fee.

Paying by credit card

You can use your American Express Card, Discover/Novus, VISA, or MasterCard to pay the amount you owe on your 2011 New York State personal income tax return, or to make tax year 2012 quarterly estimated income tax payments. You will be charged a convenience fee, and terms and conditions may vary among the credit card service providers.

For more information on paying by credit card, visit our Web site or see the instructions of the tax form you are using.

Electronic funds withdrawal

If you have a balance due, you can authorize payment by electronic funds withdrawal from your designated bank account. By choosing this option, you authorize the New York State Tax Department to transfer money from your account to the state's account.

You must include authorization and account information for electronic funds withdrawal with your return, and you cannot change it once your return is mailed or transmitted (e-filed). You must specify a payment date that is on or before April 17, 2012. If you file before April 17, money will not be withdrawn from your account before the date you specify. To avoid interest and penalties, you must authorize a withdrawal on or before the filing due date. If you designate a weekend or a bank holiday, the payment will be withdrawn the next business day.

For more information, visit our Web site or see the instructions for the form or tax preparation software you are using.

Overpayments, refunds, and collection of debts

Direct deposit of refunds

You have the option to have your income tax refund deposited directly into your bank account. Payment by this method is more secure since there is no debit card or check to get lost or stolen. Direct deposit is the fastest and easiest way to get your refund. For more information, see the instructions for the form or tax preparation software you are using.

Debit card by mail

You may choose to have your overpayment refunded by debit card. Debit cards are secure, easy to use, and flexible. If you filed a joint claim, separate debit cards will be sent in one envelope to you and your spouse. One or both of you can activate your card(s). Once activated, either card can access the entire amount of the refund. The department will mail your debit card to the **mailing address** listed on your income tax return.

In most instances, there's no charge to you for using the card. You can:

- Get cash from a bank. You do not need an account, but will need to show ID. There is no fee for the first withdrawal, which can be for the entire refund amount. There is a \$1 fee for each withdrawal after that.
- Deposit it into your bank account (but consider direct deposit instead).
- Make purchases.
- Make ATM withdrawals.
- Pay bills online.

Note: There may be a fee for using an ATM that is not in the issuer's network and for certain other activities. (More information will be provided with the card, or you can visit www.bankofamerica.com/nyrefund for details.)

Paper check by mail

You may choose to have your overpayment refunded by paper check. Paper checks for joint filers will be issued with both names and must be signed by both spouses. The department will mail your check to the **mailing address** listed on your income tax return.

Paper checks take weeks to be processed, printed, and mailed. If you don't have a bank account, you will likely be charged a fee to cash your check. You may want to consider a debit card refund instead (see *Debit card by mail* above).

Estimated tax for 2012

You have the option of applying all or a portion of your overpayment to your 2012 estimated income tax account by completing the appropriate line(s) on your income tax return.

Collection of debts from your refund

We will keep all or part of your overpayment (refund) if you:

- owe a New York State tax liability or a New York City or Yonkers personal income tax liability;

- owe past-due support or a past-due legally enforceable debt to the Internal Revenue Service (IRS) or a New York State agency, or to another state;
- defaulted on a governmental education loan, state university, or city university loan; or
- owe a New York City tax warrant judgment debt.

We will refund any amount that exceeds your debt.

A *New York State agency* includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district.

If you have any questions about whether you owe a past-due legally enforceable debt to the IRS, to another state, or to a New York State agency, contact the IRS, the other state, or the New York State agency.

For New York State tax liabilities or New York City or Yonkers personal income tax liabilities, call (518) 457-5434 or write to:

NYS TAX DEPARTMENT
COLLECTIONS AND CIVIL ENFORCEMENT DIVISION
W A HARRIMAN CAMPUS
ALBANY NY 12227

For information relating to a New York City tax warrant judgment debt, call (212) 232-3550.

Disclaiming of spouse's debt

If you are filing a joint return and you do not want to apply your part of the overpayment to your spouse's debt because you are not liable for it, complete Form IT-280, *Nonobligated Spouse Allocation*, and attach it to your original return.

You cannot file an amended return to disclaim your spouse's debt after you have filed your original return. However, you will be notified if your refund is applied against your spouse's defaulted governmental education, state university, or city university loan, past-due support, or past-due legally enforceable debt owed to a New York State agency, or New York City tax warrant judgment debt, and you did not attach Form IT-280 to your return. You will then have ten days from the notification of offset date to file Form IT-280.

We will notify you if we keep your overpayment because of a past-due legally enforceable debt to the IRS or a tax debt to another state. You

cannot use Form IT-280 to disclaim liability for a legally enforceable debt to the IRS or to disclaim a tax liability owed to another state. You must contact the IRS or the other state to resolve your responsibility for the asserted liability.

Form IT-280 is used only to protect your portion of a joint refund from being applied to a debt owed solely by your spouse. This form should not be used to request innocent spouse relief.

Innocent spouse relief

You may qualify for relief from full or partial tax liability on a joint return as an innocent spouse if:

1. there is an understatement of tax on a joint return because of an omission or error involving income, deductions, credits, or basis;
2. you can show that when you signed the return you did not know and had no reason to know of the understatement; and
3. taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated tax.

You may also request a *separation of liability* for any understated tax on a joint return if you and your spouse or former spouse are no longer married, are legally separated, or have lived apart at all times during the 12-month period prior to the date of filing for relief.

If you do not qualify as an innocent spouse or for separation of liability, you may qualify for *equitable relief* if you can show that, taking into account all the facts and circumstances, you should not be held liable for any understatement or underpayment of tax.

You must use Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, to request relief (as described above) for a tax year beginning on or after January 1, 1999. The department will consider whether you qualify for relief under innocent spouse relief, separation of liability, or equitable relief.

Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, is used only for relief under the circumstances stated above. If you want to disclaim your spouse's defaulted governmental education loan, state university, or city university loan, or past-due support, or past-due legally enforceable debt owed to a New York State agency because you do not want to apply your part of a joint refund or refundable credit to a debt owed solely by your spouse, use Form IT-280, *Nonobligated Spouse Allocation* (see *Disclaiming of spouse's debt* on page 22 of this publication).

For more information, see Publication 89, *Innocent Spouse Relief (And Separation of Liability and Equitable Relief)*.

Adjustments for errors

If you make certain errors on your 2011 personal income tax return, the Tax Department will adjust your return during processing. If an adjustment is made to your return, you may owe less tax or you may owe more tax (plus penalty and interest if applicable). Additionally, an adjustment could change the amount of the refund you expected. If your return is adjusted, you will receive an *Account Adjustment Notice* from the department.

Interest charges

Interest will be charged on income tax that is not paid on or before the due date of your return, even if you received an extension of time to file your return. Interest is a charge for the use of money, and in most cases may not be waived. Interest is compounded daily, and the rate is adjusted quarterly.

If you are due a refund, you may also be entitled to receive interest on your overpayment. Interest is compounded daily, and the rate is adjusted quarterly. If the refund is made within 45 days after the due date of your return, no interest will be paid.

If you file your return after the due date (including extensions), no interest will be paid if the refund is made within 45 days after the date you filed. If the refund is not made within this 45-day period, interest will be paid from the due date of your return or from the date you filed, whichever is later. However, interest will not be paid to you on the portion of your refund that is attributable to the real property tax credit, New York State earned income credit, child or dependent care credit, college tuition credit, farmers' school tax credit, New York City school tax credit, the New York City earned income credit, or certain other refundable credits, or if your return cannot be processed.

To be processed, your return must show your name, address, social security number, signature, and the information needed to mathematically verify your tax liability.

Penalties

Late filing penalty

If you file late, you will be charged a penalty of 5% of the income tax due for each month, or part of a month, the return is late (maximum 25%), unless you have a valid extension of time to file or you attach to your return an explanation showing reasonable cause for the delay. If your return is more than 60 days late, this penalty will not be less than \$100, or 100% of the amount required to be shown as income tax due on the return, whichever is less, reduced by any tax paid and by any credit that you may claim.

Late payment penalty	If you do not pay your income tax when due, you will be charged a penalty of $\frac{1}{2}$ of 1% of the unpaid amount for each month or part of a month it is not paid (maximum 25%). This penalty is in addition to the interest charged for late payments. This penalty may be waived if you attach to your return an explanation showing reasonable cause for paying late.
Tax figured incorrectly	You may have to pay a penalty if the income tax you report on your return is less than your correct income tax. If you are off by more than 10% or \$2,000, whichever is more, you may have to pay this penalty. The penalty is 10% of the difference between the income tax you reported and the income tax you actually owe.
Underwithholding and underpayment of estimated income tax	<p>You may be subject to a penalty for underpayment of estimated income tax if your 2011 withholding and estimated income tax payments do not equal:</p> <ul style="list-style-type: none"> • at least 90% of your 2011 income tax; or • 100% of your 2010 income tax (110% of that amount if you are not a farmer or fisherman and the New York adjusted gross income on that return is more than \$150,000 or, if married filing separately for 2011, more than \$75,000), based upon a return covering 12 months. <p>However, you will only be charged the penalty if you owe at least \$300 of New York State or New York City or Yonkers income tax after deducting tax withheld and credits you are entitled to claim. For more information, see Form IT-2105.9, <i>Underpayment of Estimated Income Tax by Individuals and Fiduciaries</i>, and its instructions (Form IT-2105.9-I).</p>
Negligence penalty	<p>If your return does not show all of the income tax imposed under the Tax Law, its rules or regulations, due to negligence or intentional disregard but not with intent to defraud, you may be charged a penalty of 5% of any deficient amount.</p> <p>In general, a deficiency is the difference between the correct income tax and the income tax shown on your return. In addition, 50% of the interest due on any underpayment resulting from negligence will be added to your tax.</p>
Fraudulent returns	If any part of a deficiency is due to fraud, you may be charged a penalty of two times the amount of deficiency. In general, a deficiency is the difference between the correct income tax and the income tax shown on your return.
Frivolous returns	A penalty of up to \$5,000 will be imposed on any person who files a frivolous tax return. A return is considered frivolous when it does not contain information needed to judge the correctness of the tax return, or

reports information that is obviously and substantially incorrect, and is intended to delay or impede the administration of the personal income tax.

Other taxes

Sales or use tax

You must report any unpaid sales or use tax owed for 2011 on your personal income tax return for 2011. You owe sales or compensating use tax if you:

- purchased an item or service subject to tax that is delivered to you in New York State without payment of New York State and local tax to the seller; or
- purchased an item or service outside New York State that is subject to sales tax in New York State (and you were a resident of New York State at the time of the purchase) and subsequently used the item in New York State.

Note: You may be entitled to a credit for sales tax paid to another state. See the exact calculation method for sales tax in the instructions for Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*.

For sales and use tax purposes, a resident includes persons who have a permanent place of abode in the state. Accordingly, you may be a resident for sales tax purposes even though you may not be a resident for income tax purposes. See the instructions for Form ST-140 for more information.

You may not use your personal income tax return to report:

- Any sales and use tax on business purchases if the business is registered for sales and use tax purposes. You must report this tax on the business's sales tax return.
- Any unpaid sales and use tax on motor vehicles, trailers, all-terrain vehicles, vessels, or snowmobiles. This tax is paid directly to the New York State Department of Motor Vehicles (DMV). However, if you will not be registering or titling your motor vehicle, trailer, all-terrain vehicle, vessel, or snowmobile at the DMV, you should remit the tax directly to the Tax Department using Form ST-130, *Business Purchaser's Report of Sales and Use Tax*, or Form ST-140.

An unpaid sales or use tax liability commonly arises if you made purchases through the Internet, by catalog, from television shopping channels, or on an Indian reservation, or if you purchased items or services subject to tax in another state and brought them back to New York for use here.

Example 1: *You purchased a computer over the Internet that was delivered to your house in Monroe County, New York, from an out-of-state company and did not pay sales tax to that company.*

Example 2: *You purchased a book on a trip to New Hampshire that you brought back to your residence in Nassau County, New York, for use there.*

You may also owe an additional **local** tax if you made a purchase in a locality in New York State and brought the item into or subsequently used the service in another New York State locality where you were a resident and that locality had a higher tax rate than where you made the purchase.

If you are not filing an income tax return but owe sales or use tax for 2011, you must pay any unpaid sales or use tax liability by filing Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*, by April 17, 2012. Alternatively, you may file Form ST-141, *Individual Purchaser's Periodic Report of Sales and Use Tax*, periodically to report sales or use tax liability on other than an annual basis.

For additional information, see the instructions for Form IT-201 and/or Tax Bulletin TB-ST-913, *Use Tax for Individuals (including Estates and Trusts)*.

**Metropolitan
commuter
transportation
mobility tax
(MCTMT)**

The MCTMT applies to certain employers. It also applies to individuals (including partners in partnerships, and partners and members of limited liability partnerships (LLPs) and limited liability companies (LLCs) that are treated as partnerships for federal income tax purposes) who have net earnings from self-employment and who are engaging in business within the metropolitan commuter transportation district (MCTD).

The *metropolitan commuter transportation district (MCTD)* includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

For more information on the MCTMT, visit our Web site or call the MCTMT Information Center at (518) 485-2392.

**Privacy and
confidentiality**

The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, you must give specific written authorization to a practitioner, paid preparer, or other representative before he or she will be given access to your confidential records or be allowed to represent you before the Tax Department or the Division of Tax Appeals. There are various levels of authorization you can give.

Third-party designee

If you want to authorize a friend, family member, or any other person (third-party designee) you choose to discuss your tax return with the New York State Tax Department, check the **Yes** box in the *Third-party designee* area of your income tax return and enter the information requested.

If you mark the **Yes** box, you (and your spouse, if filing a joint return) are authorizing the Tax Department to discuss with your designee any questions that arise during the processing of your return. You are authorizing the designee to:

- give the Tax Department any information that is missing from your return;
- call the Tax Department for information about the processing of your return or the status of your refund or payment(s); and
- respond to certain Tax Department notices that you share with the designee about math errors, offsets, and return preparation. The Tax Department will **not** send notices to the designee.

You are not authorizing the designee to receive any refund check, bind you to anything (including additional tax liability), or otherwise represent you before the Tax Department. If you want the designee to perform those services for you, you must file a power of attorney.

The authorization will end automatically one year after the later of the return due date (including any extension) or the date you file your return.

Power of attorney

A power of attorney is evidence that a practitioner or other person may act on your behalf. The power of attorney must contain explicit authorization for your representative to act for you, and must be properly completed and signed.

The Tax Department prefers that practitioners use one of the department's power of attorney forms:

- Form POA-1, *Power of Attorney*, or
- Form ET-14, *Estate Tax Power of Attorney*.

The department will accept other forms if they contain all the necessary elements as required on the Tax Department forms.

Tax Department power of attorney forms may be used for New York State tax matters, New York City tax matters, or both.

Voluntary Disclosure and Compliance Program

The Voluntary Disclosure and Compliance Program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the department, taxpayers will avoid tax penalties as well as civil, administrative, and criminal actions by the department. In addition, the taxpayer will not be subject to any criminal tax prosecution in New York State for the disclosed conduct.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the department, and who meets all of the following criteria:

- The taxpayer is not currently under audit by the department.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched, or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business, or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible, the tax must not have been previously assessed.

For additional information on this program or to apply online, visit our Web site.

Consumer Bill of Rights Regarding Tax Preparers

Taxpayers who use the services of paid tax preparers are entitled to protection from unfair treatment. While most tax preparers act within the law and treat their clients fairly, there are some that do not.

All tax preparers are subject to certain requirements concerning refund anticipation loans (RALs) and refund anticipation checks (RACs). Tax preparers are prohibited from advertising RALs as refunds (for example,

advertising a RAL as an *instant refund*). Additionally, any advertisement by a tax preparer that mentions RALs must state conspicuously that a RAL is in fact a loan and that a fee or interest will be charged by the lending institution. The lending institution must be identified in the advertisement. In addition, **before** a taxpayer enters into a RAL or an agreement for a RAC, the tax preparer facilitating the loan must provide a disclosure statement to the taxpayer in writing.

The Tax Department produces and makes available an informational flier providing certain information for consumers about their rights regarding tax preparers. The flier is Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*, and it is available on our Web site.

Note: Tax preparers (except those listed as *Exempt preparers* below and tax preparers who prepare tax returns within New York City) are required under the General Business Law (Article 24-C) to provide their customers with contact information and a copy of Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*.

Requirement to provide contact information

Tax preparers are required to provide each of their customers with a receipt containing an address and phone number at which the preparer can be contacted throughout the year. If the actual person who prepared the return is an employee, partner, or shareholder of an entity (business), the general address and phone number of the business should be on the receipt.

Exempt preparers

The following tax preparers are exempt from the requirements to provide you with contact information and a copy of Publication 135:

- an employee or officer of a business enterprise who is preparing the tax returns of that business enterprise;
- a fiduciary, and the employees of the fiduciary, who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor, or beneficiaries;
- an attorney who advises or assists in the preparation of tax returns in the practice of law, and his or her employees;
- a certified public accountant (CPA) licensed under the New York State education law or licensed by one or more of the states or jurisdictions of the United States, and his or her employees;
- a public accountant licensed under the New York State education law, and his or her employees;

- an employee of a governmental unit, agency, or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her duties; and
- an agent enrolled to practice before the Internal Revenue Service (IRS).

New York City tax preparers

Tax preparers operating within New York City are not subject to the provisions of Article 24-C of the General Business Law for tax returns actually prepared within the city. Instead, Subchapter 8 of Chapter 4 of Title 20 of the Administrative Code of the City of New York provides rules that apply specifically to tax preparers operating in New York City.

For more information on New York City's consumer bill of rights regarding tax preparers, visit the New York City Department of Consumer Affairs Web site (www.nyc.gov/consumers), call 311 from within the five boroughs of New York City, or call (212) 639-9675 if you are outside the city.

New York State Tax Department

Online Services

**Create an Online Services
account and log in to:**

- make payments,
- file certain returns,
- view account information,
and more.

Access is available 24 hours a day, 7 days
a week (except for scheduled maintenance).

www.tax.ny.gov

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Automated income tax refund status: (518) 457-5149

Personal Income Tax Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.