

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171 and subsection (a) of section 697 of the Tax Law, the Commissioner of Taxation and Finance hereby makes and adopts the following amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, as published in Subchapter A of Chapter II of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. The title of Part 120 of such regulations is amended to read as follows:

Resident Credits for Income Taxes of Another State, a Political Subdivision of Another State, [or] the District of Columbia, or a Province of Canada

Section 2. The note below the title of Part 120 of such regulations is REPEALED.

Section 3. Section 120.1 of such regulations is amended to read as follows:

Section 120.1 Credit against ordinary tax for income tax of another state, a political subdivision of another state, [or] the District of Columbia, or a province of Canada. (Tax Law, section 620(a))

(a) “General.” (1) Where a resident individual receives income derived from sources within another state of the United States, a political subdivision of another state [or], the District of Columbia, [he] or a province of Canada, such resident individual is entitled to a credit against his or her ordinary tax (see section 101.1 of this Title) for any income tax imposed on such income by the other jurisdiction. The term “income tax imposed”, as used in this section and in sections 120.2 through [120.4] 120.5 of this Part, does not include the portion of such tax (determined in accordance with the provisions of section [120.5(b)] 120.6(b) of this Part) imposed on the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax

imposed by section [601-C] 603 of the Tax Law. (See section [120.5] 120.6 of this Part for the credit allowable against the separate tax on the ordinary income portion (or part thereof) of a lump sum distribution.) [No credit is available for any income tax imposed by any jurisdiction other than a state of the United States, a political subdivision thereof or the District of Columbia, nor is any credit available under this Part for any tax other than an income tax.] A resident estate or trust is also entitled to a similar credit against ordinary tax, computed in the same way and subject to the same exception and limitations, set forth in this section and sections 120.2 through [120.4] 120.5 of this Part, as in the case of a resident individual. [The credit for income taxes imposed by a political subdivision of another state applies only for taxable years beginning on or after January 1, 1961.]

(2) The credit against ordinary tax is allowable only for that portion of the income tax imposed by another state of the United States, a political subdivision of another state, [or] the District of Columbia, or a province of Canada (or both another state of the United States and also one or more of its political subdivisions) which is applicable to the income derived from sources within such other taxing jurisdiction. (See section 120.4(d) of this Part for the definition of the term “income derived from sources within [another jurisdiction,]” another jurisdiction, and subdivision (c) of such section for the definition of “income tax imposed by the other jurisdiction”.)

(b) “Method of claiming credit.” (1) If a resident individual claims a credit against ordinary tax under this Part, [he] such resident individual must attach to his or her New York State personal income tax return [a New York State “Claim for Resident Tax Credit” (form IT-112R), together with a copy of the income tax return filed with the other state, political subdivision or the District of Columbia] the credit claim form.

(2)[If a resident individual claims a credit against ordinary tax under this Part which is based upon an income tax, and the tax liability payable is satisfied by the income tax withheld without the requirement for filing a return with such taxing jurisdiction, adequate substantiation of payment must be attached to the New York State personal income tax return (for example, a wage and tax statement), together with form IT-112R.

(3) If two or more taxing jurisdictions (as defined in this paragraph) impose income taxes on the same or different amounts of income derived from sources within such taxing jurisdictions, a separate New York State ["Claim for Resident Tax Credit" (form IT-112R)] credit claim form must be attached to the taxpayer's New York State personal income tax return for each jurisdiction for which credit is claimed [, together with a copy of each of the income tax returns filed with the other jurisdictions]. The term "two or more taxing jurisdictions", as used in this section and in section 120.2 of this Part, means any combination of states (other than New York State), political subdivisions of different states (other than both a state and one or more of its political subdivisions as provided in paragraph [(4)] (3) of this subdivision) [and], the District of Columbia, and provinces of Canada.

[(4)] (3) If both a state (other than New York State) and one or more of the political subdivisions of such state impose income taxes on the same or different amounts of income, derived from sources within such state and one or more of its political subdivisions, the sum of the income taxes paid to the state and its political subdivisions must be reported on a single credit claim form [IT-112R. A copy of each of the income tax returns filed with such other state and one or more of its political subdivisions must be attached to the New York State personal income tax return]. (See also section 120.3 of this Part.)

[(5)] (4) A resident estate or trust must also comply with the provisions of this subdivision in order to claim a credit for an income tax of another state, a political subdivision or subdivisions of another state, [or] the District of Columbia, or a province or provinces of Canada.

Section 4. Section 120.2 of such regulations is amended to read as follows:

Section 120.2 Limitations. (Tax Law, section 620(b))

The amount of the credit against ordinary tax for income tax imposed by another jurisdiction is subject to the [three] limitations provided in [subdivisions (a)-(c) of] this section. Where credit is claimed against ordinary tax for income taxes imposed by two or more taxing jurisdictions, as defined in section [120.1(b)(3)]

120.1(b)(2) of this Part, these [three] limitations must be applied separately to each jurisdiction for each credit being claimed. See section 120.3 of this Part for the limitations in cases where such credit is claimed for income taxes imposed by both a state and one or more of its political subdivisions.

(a) The credit for the taxable year cannot exceed the income tax payable to the other jurisdiction. When both a state (other than New York State) and one or more of its political subdivisions impose income taxes on the same or different amounts of income derived from sources within such state as defined in section 120.4(d) of this Part, see section 120.3 of this Part. If a taxpayer on his or her New York State personal income tax return claims a credit pursuant to this Part for the income tax or taxes (or any portion thereof) of another jurisdiction, and it is later determined that the amount of such tax or taxes (or the portion for which credit was claimed) is more or less than the amount of credit claimed with respect to such tax or taxes on the taxpayer's New York State personal income tax return, he or she must [immediately notify the Income Tax Section of the Audit Division of the New York State Department of Taxation and Finance] file an amended New York State personal income tax return at the address indicated on the form and in the instructions. [The Income Tax Section of the Audit Division will then recompute the amount of the New York State personal income tax. Any additional New York State personal income tax due upon such recomputation must be paid by the taxpayer upon notice and demand by the Income Tax Section of the Audit Division. Any overpayment of New York State personal income tax shown by such recomputation will be refunded to the taxpayer, if claim for refund is filed within the period provided by section 687 of the Tax Law.]

(b) The credit for the taxable year cannot exceed the [percentage of] amount obtained by multiplying the New York State tax payable (see section 120.4(b) of this Part)[,] by a percentage determined by dividing the portion of the taxpayer's New York income subject to taxation in such other jurisdiction (the numerator) by the [total amount of the] taxpayer's total New York income [(i.e., New York adjusted gross income)]. For example, if the total New York income of a single resident individual for the taxable year was \$10,200, and \$5,100

thereof was subject to an income tax by the Commonwealth of Massachusetts, the amount of resident credit would be limited to 50 percent of the New York State tax payable (which is the percentage of \$5,100 divided by \$10,200) (the denominator).

(c) [(1)] The credit for the taxable year cannot reduce the New York State tax payable to an amount less than would have been due if the income subject to taxation by the other jurisdiction [were] was excluded from the taxpayer's New York income.

[(2) If, in the example in subdivision (b) of this section, the New York State tax payable would have been \$223.20 less, by eliminating the Massachusetts income from the income subject to the New York State personal income tax, the credit may not exceed \$223.20. In applying this additional limitation, the taxpayer must redetermine the New York standard deduction (where applicable), and must take into consideration the low income provisions of section 601(a)(2) of the Tax Law.]

(d) When a taxpayer elects to claim the foreign tax credit for Federal income tax purposes, the resident credit for income tax imposed by a province of Canada will be allowed for the portion of the Canadian provincial tax that is not claimed for Federal income tax purposes for the taxable year or a preceding taxable year. If any amount of such portion of the Canadian provincial tax is claimed for Federal purposes in a succeeding taxable year, the amount claimed must be added back for New York State purposes in such succeeding taxable year. The Canadian provincial tax will be treated as being claimed last for Federal income tax purposes and for purposes of this subdivision.

Section 5. Subdivision (b) of section 120.3 of such regulations is amended to read as follows:

(b) The credit for the taxable year cannot exceed the [percentage of] amount obtained by multiplying the New York State tax payable (see section 120.4(b) of this Part)[,] by a percentage determined by dividing the portion of the taxpayer's New York income subject to taxation in such other jurisdictions (the numerator) by the [total of the] taxpayer's total New York income (the denominator). Where different amounts of income are

subject to income tax by both the other state and by one or more of its subdivisions, the larger amount of income subject to tax by either the state or one or more of its subdivisions must be used in the numerator of this computation.

Section 6. Subdivision (c) of such section is REPEALED and a new subdivision (c) is added to read as follows:

(c) The credit for the taxable year for total income taxes paid to both a state and to one or more of its political subdivisions cannot reduce the New York State tax payable to an amount less than would have been due if the income subject to taxation by the other jurisdictions (or, where different amounts of income are subject to income tax by the other jurisdictions, the larger of such amounts) were excluded from the taxpayer's New York income.

Section 7. Section 120.4 of such regulations is amended to read as follows:

Section 120.4 Definitions. (Tax Law, section 620(c))

The following definitions apply for purposes of sections 120.1-120.3 of this Part:

(a) "Total New York income." (1) In the case of a resident individual, the term "total New York income" means [his] New York adjusted gross income as determined under [Part 112 of this Article] section 612 of the Tax Law.

(2) In the case of a resident estate or trust, the term "total New York income" means the amount of its income determined as if the estate or trust were a resident individual computing [his] New York adjusted gross income under [Part 112 of this Article] section 612 of the Tax Law.

(b) "New York State tax payable." The term "New York State tax payable" means the ordinary tax (see section 101.1 of this Title) less [the following:

(1)] any household credit permitted under section [106.2 of this Title;

(2) any tentative credit for certain household and dependent care services necessary for gainful employment (20 percent of the Federal child care credit); see section 106.3 of this Title; and

(3) any credit for sales or compensating use taxes paid upon the purchase of any catalytic, purifying or bleaching chemical agent permitted under section 106.4 of this Title] 606(b) of the Tax Law.

The term “New York State tax payable”, for purposes of this Part, does not include any amounts representing interest or penalties.

(c) The term “income tax imposed by the other jurisdiction” means the total income tax payable thereto for the taxable year, exclusive of the portion of such tax (determined in accordance with the provisions of section [120.5(b)] 120.6(b) of this Part) which is imposed on the ordinary income portion (or part thereof) of a lump sum distribution, and any interest or penalties. No resident credit is allowable if no tax is actually due to the other jurisdiction. Further, no credit is allowable if another jurisdiction provides for an exemption [of] from its tax on account of the New York State personal income tax of a New York State resident, since the tax imposed by the other jurisdiction is the amount payable after giving effect to such exemption and the credit is reduced if such other jurisdiction provides for a reduction of its tax on such amount.

(d) The term “[Income] income derived from sources within” another state, a political subdivision of another state, [or] the District of Columbia, or a province of Canada, is construed so as to accord with the definition of the term “derived from or connected with New York State sources”, as set forth in [Part 132 of this Title] section 631 of the Tax Law in relation to the [adjusted gross] New York source income of a nonresident individual. Thus, the resident credit against ordinary tax is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction, and income from real or tangible personal property situated in the other jurisdiction. [On the other hand] Conversely, the resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property

employed in a business, trade or profession carried on in the other jurisdiction. Thus, for example, no resident credit is allowable for an income tax of another jurisdiction on dividend income not derived from property employed in a business, trade or profession carried on in such jurisdiction.

Section 8. Section 120.5 of such regulations is renumbered to be section 120.6 and a new section 120.5 is added to read as follows:

Section 120.5 S corporation shareholders. (Tax Law, section 620(d))

For a shareholder of an S corporation, the term “income tax” in section 120.1(a) of this Part does not include any tax imposed upon or paid by the corporation, but does include any such tax imposed upon or payable by the shareholder to another jurisdiction calculated on the income of the corporation, regardless of whether the corporation is an S corporation in the other state by virtue of a separate state election or in conformity with the Federal election.

Section 9. Subdivisions (a), (b) and (c) of section 120.6 of such regulations, as renumbered by section 8 above, are amended to read as follows:

(a) “General.” [For taxable years beginning on or after January 1, 1978, a] A resident individual, estate or trust is entitled to a credit under this section against the separate tax imposed by section [601-C] 603 of the Tax Law on the ordinary income portion (or part thereof) of a lump sum distribution. This credit is allowable with respect to any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, [or] the District of Columbia, or a province of Canada on such ordinary income portion (or part thereof) of a lump sum distribution which is derived from a business, trade, profession, occupation or from personal services as an employee within such taxing jurisdiction and is subject to tax under section [601-C] 603 of the Tax Law. (See subdivision (b) of this section for the determination of income tax imposed by another jurisdiction.) However, no credit is allowable if the other jurisdiction provides an

exemption of its income tax on the ordinary income portion (or part thereof) of a lump sum distribution to a New York State resident subject to the New York State separate tax on such income.

(b) “Determination of income tax imposed by another jurisdiction.” (1) Where the ordinary income portion (or part thereof) of a lump sum distribution is subject to separate income taxation by another state of the United States, a political subdivision of such state, [or] the District of Columbia, or a province of Canada, the amount of separate tax imposed on such income by such jurisdiction (reduced by any applicable credits of such jurisdiction, exclusive of prepayments) is the amount which constitutes the income tax imposed on the ordinary income portion (or part thereof) of a lump sum distribution by such other jurisdiction.

(2) Where such ordinary income portion (or part thereof) of a lump sum distribution is not subject to separate income taxation by such other taxing jurisdiction, but is included as income in determining the income tax imposed by such jurisdiction, the portion of such income tax which constitutes the income tax imposed on the ordinary income portion (or part thereof) of a lump sum distribution is determined by multiplying the entire income tax payable to the other taxing jurisdiction by a fraction, the numerator of which is the ordinary income portion (or part thereof) of the lump sum distribution included in the income subject to tax by such jurisdiction and the denominator of which is all the income subject to such tax by such jurisdiction. See sections 120.1 through [120.4] 120.5 of this Part for the resident credit allowable against ordinary tax for the balance of the income tax imposed by such other taxing jurisdiction which does not constitute the income tax imposed on the ordinary income portion (or part thereof) of a lump sum distribution.

(c) “Method of claiming credit.” (1) If a resident individual, estate or trust claims a credit under this section for income taxes imposed by another jurisdiction (determined in accordance with the provisions of subdivision (b) of this section), a completed New York State [“Claim for Resident Tax Credit Against Separate Tax on Lump Sum Distributions” (form IT-112.1)] credit claim form must be attached to the New York State personal or fiduciary income tax return filed for the taxable year [, together with a copy of the income tax return

and, where applicable, a copy of any separate tax computation schedule filed with the other state, political subdivision or the District of Columbia].

(2) (i) If two or more taxing jurisdictions (as defined in this paragraph) impose income taxes on the same or different amounts of the ordinary income portion (or part thereof) of a lump sum distribution derived from sources within such other jurisdictions, a separate credit claim form [IT-112.1] must be completed for each jurisdiction for which credit is claimed and attached to the taxpayer's New York State personal or fiduciary income tax return [, together with a copy of each of the income tax returns filed with the other jurisdiction. In addition, if a separate computation schedule is required to be filed with the other jurisdiction, a copy of each such computation schedule must also be attached to the taxpayer's New York State personal or fiduciary income tax return filed for the taxable year.] In order to determine the income tax imposed by another jurisdiction to be reported on the separate credit claim forms [IT-112.1], see subdivision (b) of this section.

(ii) The term "two or more taxing jurisdictions" as used in the section means any combination of states (other than New York State), political subdivisions of different states (other than both a state and one or more of its political subdivisions as provided in subdivision (e) of this section), [and] the District of Columbia, and provinces of Canada.

(3) If both a state (other than New York State) and one or more of the political subdivisions of such state impose income taxes on the same or different amounts of the ordinary income portion (or part thereof) of a lump sum distribution derived from sources within such state and one or more of its political subdivisions, the sum of such income taxes imposed by the state and its political subdivisions (determined in accordance with the applicable provisions of subdivision (b) of this section) must be reported on a single credit claim form [IT-112.1]. The single credit claim form [IT-112.1] must be filed with the taxpayer's New York State personal or fiduciary income tax return [together with copies of the income tax returns, and where applicable, the separate tax computation schedules filed with the other jurisdictions].

Section 10. Paragraphs (1), (2) and (3) of subdivision (d) of such section, as renumbered by section 8 above, are amended to read as follows:

(1) The credit allowable under this section cannot exceed the income tax imposed by another jurisdiction (as determined in accordance with the provisions of subdivision (b) of this section) on the ordinary income portion (or part thereof) of a lump sum distribution. If a taxpayer claims a credit against the separate tax in accordance with the provisions of this section for the income tax or taxes (or any portion thereof) imposed by another jurisdiction on the ordinary income portion (or part thereof) of a lump sum distribution, and it is later determined that the amount of such tax or taxes (or the portion for which the credit was claimed) is more or less than the amount of credit claimed with respect to such tax or taxes on the taxpayer's New York State personal or fiduciary return, the taxpayer (or fiduciary in the case of a fiduciary return) must [immediately notify the Income Tax Section of the New York State Department of Taxation and Finance] file an amended New York State return at the address indicated on the form and in the instructions. [The Income Tax Section of the Audit Division will then recompute the amount of credit allowable under this section. Any additional New York State personal income tax due upon such recomputation must be paid by the taxpayer upon notice and demand by the Income Tax Section of the Audit Division. Any overpayment of the New York State personal income tax will be refunded to the taxpayer if claim for refund is filed within the period provided by section 687 of the Tax Law.]

(2) The credit allowable under this section cannot exceed the [percentage of] amount obtained by multiplying the separate tax due under section [601-C] 603 of the Tax Law by a percentage determined by dividing the portion of the ordinary income portion of the lump sum distribution taxable both under section [601-C] 603 of the Tax Law and by such other jurisdiction (the numerator) by the total amount of the ordinary income portion of the lump sum distribution taxable under such section [601-C of the Tax Law] (the denominator).

(3) The credit allowable under this section cannot reduce the separate tax due under section [601-C] 603 of the Tax Law to an amount less than would have been due if the part of the ordinary income portion of the lump sum distribution taxable both under section [601-C] 603 of the Tax Law and by such other jurisdiction were excluded from the computation of the separate tax due under such section [601-C of the Tax Law].

Section 11. The paragraph before the example and the example (including the Note) in subdivision (d) of such section, as renumbered by section 8 above, are REPEALED.

Section 12. The opening paragraph of subdivision (e) of such section, as renumbered by section 8 above, is amended to read as follows:

“Limitations where credit is claimed under this section for income taxes paid to both a state and also to one or more of its political subdivisions.” Where both a state and one or more of its political subdivisions impose income taxes on the same or different amounts of a resident taxpayer’s ordinary income portion (or part thereof) of a lump sum distribution derived from sources within such state and political subdivision (which income is also subject to the separate tax under section [601-C] 603 of the Tax Law), the maximum credit allowable is the lowest of the amounts determined after computing the following three limitations:

Section 13. Paragraphs (2) and (3) of subdivision (e) of such section, as renumbered by section 8 above, are amended to read as follows:

(2) The credit cannot exceed the [percentage of] amount obtained by multiplying the New York State separate tax payable by the taxpayer on the ordinary income portion (or part thereof) of a lump sum distribution by the percentage determined by dividing the taxpayer’s portion (or part thereof) of such income subject to taxation by such other jurisdiction (the numerator) by the taxpayer’s portion (or part thereof) of such income subject to the New York State separate tax imposed thereon by section [601-C] 603 of the Tax Law (the denominator). Where different amounts of the ordinary income portion (or part thereof) are subject to taxation

by both the other state and by one or more of its subdivisions, the larger amount of such income subject to tax by either the state or one or more of its subdivisions must be used in the numerator of this computation.

(3) The credit for the total income taxes paid by the taxpayer to both another state and one or more of its political subdivisions on the ordinary income portion (or part thereof) of a lump sum distribution cannot reduce the New York State separate tax payable under section [601-C] 603 of the Tax Law to an amount less than would have been due under such section if the ordinary income portion (or part thereof) of the lump sum distribution subject to taxation by the other jurisdictions (or where different amounts of such income are subject to taxation by the other jurisdictions, the larger of such amounts) were excluded from the ordinary income portion (or part thereof) of the lump sum distribution reported in accordance with section [601-C] 603 of the Tax Law.

Section 14. The paragraph before the example and the example in subdivision (e) of such section, as renumbered by section 8 above, are REPEALED.

Section 15. This regulation shall apply to taxable years beginning on or after January 1, 2005.

Dated: Albany, New York
December 13, 2005

Andrew S. Eristoff
Commissioner of Taxation and Finance