

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, subsection (a) of section 652, subsection (a) of section 657, and subsection (a) of section 697 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt 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, to read as follows:

Section 1. The unlettered paragraph in section 152.12 of the Personal Income Tax regulations is amended to read as follows:

Any New York State income tax return required to be filed under this Subchapter, by or for a resident individual, a nonresident individual, a partnership, a resident estate or trust or a nonresident estate or trust, must be delivered [or], mailed, or transmitted to [New York State Income Tax, W.A. Harriman Campus, Albany, NY 12227] the address or location as directed in the appropriate forms and instructions.

Section 2. The unlettered paragraph in section 152.13 of such regulations is amended to read as follows:

All applications for extensions of time must be delivered [or], mailed, or transmitted to [New York State Income Tax, W.A. Harriman Campus, Albany, NY 12227] the address or location as directed in the appropriate forms and instructions. (see Part 157 of this Article).

Section 3. Subdivisions (a) and (b) of section 157.1 of such regulations are amended to read as follows:

(a) (1)The Department [of Taxation and Finance] may grant a reasonable extension of time for filing any New York State income tax return, statement, or other required document or for payment of New York State

income tax or estimated tax (or any installment) on such terms and conditions as it may require. However, with the exception of a taxpayer who is outside the United States and Puerto Rico or who intends to claim nonresident status pursuant to the provisions of section [105.20(b)(2) of this Title] 605(b)(1)(A)(ii) of the Tax Law, no such extension shall be for more than six months.

(2) To be granted any of the extensions described in paragraph (1) of this subdivision, individuals serving in the Armed Forces of the United States are required to comply with the terms and conditions of this Part. However, section 696 of the Tax Law provides certain individuals who are serving or who have been injured while serving in combat zones, contingency operations where the individual is deployed outside the United States away from the individual's permanent duty station, or qualified hazardous duty areas with additional time to file returns, make payments of tax, and claim any credits or refunds. See section 696 of the Tax Law for more detailed information.

(b) An extension of time to file a New York State personal income tax return automatically extends to the same date the time to file a City of New York resident personal income tax return, [a City of New York nonresident earnings tax return,] a City of Yonkers resident income tax surcharge return, and a City of Yonkers nonresident earnings tax return.

Section 4. Section 157.2 of such regulations is repealed and a new section 157.2 is added to read as follows:

Sec. 157.2 Application for automatic extension of time for filing New York State income tax returns.

(a) The Department will grant an automatic six-month extension of time to file a New York State income tax return beyond the date prescribed for filing the return upon the proper application by the individual, partnership, or fiduciary required to file the return. The application must be filed on or before the date prescribed for filing the return.

(b) The Department will set forth in the appropriate forms and instructions the different methods, along with the terms and conditions for each, for individuals, partnerships, and fiduciaries to make proper application for the automatic extension of time to file a New York State income tax return. The methods may include, but are not limited to, the use of the appropriate New York State application form, the corresponding federal application form, electronic filing, and the Department's web site application process.

(c) (1) (i) In the case of an individual or a fiduciary, the application for automatic extension of time for filing a New York State income tax return must be accompanied by a full remittance of the amounts properly estimated as New York State personal income tax, City of New York tax, and City of Yonkers tax remaining unpaid as of the date prescribed for filing the return.

(ii) For purposes of this Part, the "New York State personal income tax" means the amount of New York State personal income tax imposed under article 22 of the Tax Law; the "City of New York tax" means the City of New York personal income tax imposed under Chapter 17 of Title 11 of the Administrative Code of the City of New York; and the "City of Yonkers tax" means the City of Yonkers income tax surcharge on residents imposed under article IX of the Codes and Ordinances of the City of Yonkers and the City of Yonkers earning tax on nonresidents imposed under article X of the Codes and Ordinances of the City of Yonkers.

(2) In the case of an individual or a fiduciary, and notwithstanding any other provision of this Title, the application for automatic extension of time for filing the income tax return must be accompanied by a full remittance of any sales and compensating use taxes remaining unpaid as of the date prescribed for filing the income tax return (see Part R3 of Chapter 62 of the Laws of 2003, as amended by Part V of Chapter 686 of the Laws of 2003).

(d) Any automatic extension of time for filing a New York State income tax return granted under this section will not operate to extend the time for the payment of any New York State personal income tax, City of New York tax, City of Yonkers tax, or sales and compensating use taxes due on the return. (However, see

section 157.5 of this Part for extension of time for payment of New York State personal income tax, City of New York tax, and City of Yonkers tax. Also, see section 2392.1 of this Title for provisions relating to the presumption of reasonable cause for purposes of not imposing the late payment addition to tax).

(e) Except in undue hardship cases, the Department will not grant an extension of time to file a New York State income tax return unless the provisions for application set forth both in this section and in the appropriate forms and instructions have been met.

Section 5. Section 157.3 of the regulations is repealed and a new section 157.3 is added to read as follows:

Sec. 157.3 Additional extension of time.

(a) “Maximum period of extension of time to file a New York State income tax return.” Except as provided in subdivision (b) of this section, the maximum period of extension of time to file a New York State income tax return under the provisions of Section 657 of the Tax Law and of this Part is six months. The period of extension is computed from the original due date of the income tax return.

(b) “Additional extension of time to file beyond six months.” (1) The Department may grant an extension of time to file for longer than six months to a taxpayer:

(i) who is outside the United States and Puerto Rico, or

(ii) who intends to claim nonresident status pursuant to section 605(b)(1)(A)(ii) of the Tax Law.

(2) A taxpayer who qualifies under paragraph (1) of this subdivision may make application for an extension of time to file beyond six months from the original due date of the income tax return by making a written request as prescribed in the appropriate forms and instructions.

Section 6. Subdivision (b) of section 157.4 of such regulations is amended to read as follows:

(b) “Application for additional [two-month] four-month automatic extension of time to file.” Where a New York State personal income tax return cannot be filed on or before the end of the automatic two-month

extension of time referred to in subdivision (a) of this section, a taxpayer will be allowed an additional [two-month] four-month extension of time if such taxpayer files an application and makes the required payment of New York State personal income tax, City of New York tax, and City of Yonkers tax on or before the end of such automatic two-month extension of time in accordance with the provisions of section 157.2 of this Part. Interest at the rate prescribed by the Commissioner [of Taxation and Finance] (see Part 2393 of this Title) on any balance of New York State personal income tax, City of New York tax, and City of Yonkers tax will be due from the due date of the New York State personal income tax return (determined without regard to any extension of time) to the date of payment.

Section 7. Subdivision (a) and paragraphs (1) and (2) of subdivision (b) of section 157.5 of such regulations are amended to read as follows:

(a) "Income tax payments." The Department [of Taxation and Finance] may, apart from any extension of time to file a New York State income tax return, grant a reasonable extension of time for payment of the New York State personal income tax, City of New York tax, and City of Yonkers tax upon receipt of a letter from the taxpayer giving complete information as to the reasons for such taxpayer's inability to make payment of the New York State personal income tax, City of New York tax, and City of Yonkers tax on or before the prescribed due date. However, except as provided in subdivision (b) of this section, where the time for payment of any New York State personal income tax, City of New York tax, and City of Yonkers tax is extended, interest will be added at the rate prescribed by the Commissioner [of Taxation and Finance] (see Part 2393 of this Title) on any balance due from the original due date of the New York State income tax return (determined without regard to any extension of time) to the date of payment.

(b) "Estimated tax payments." (1) The Department [of Taxation and Finance] may grant an extension of time for paying any installment of estimated tax required to be paid, in order to avoid the addition to tax imposed under section 685(c) of the Tax Law (see section 185.3 of this Title), without interest. Such extension,

however, will only be granted because the taxpayer is seriously ill or for other compelling reasons. A request for an extension of time for paying any installment of estimated tax should be made by letter and mailed to New York State Income Tax, W. A. Harriman Campus, Albany, N.Y. 12227.

(2) An extension of time for paying any installment of estimated tax will normally be limited to one month and, except in cases of a taxpayer who is outside the United States and Puerto Rico or a taxpayer who intends to claim nonresident status pursuant to section [105.20(b)(2) of this Title] 605(b)(1)(A)(ii) of the Tax Law, no extension will be granted for more than six months.

Section 8. Section 157.6 of such regulations is repealed.

Section 9. This regulation shall apply to taxable years beginning on or after January 1, 2005.

Dated: Albany, New York
October 11, 2005

Andrew S. Eristoff
Commissioner of Taxation and Finance