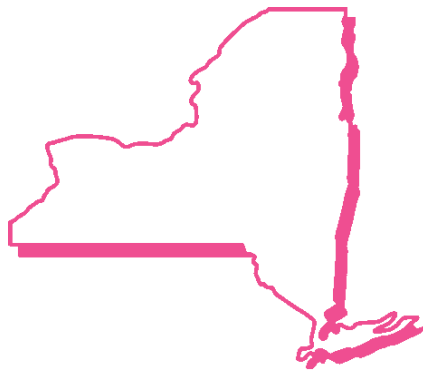


# GENERAL INCOME TAX INFORMATION FOR NEW YORK STATE RESIDENTS

For tax year 2009



The information presented is current as of this publication's print date. Visit our Web site at [www.tax.ny.gov](http://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.

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## New for tax year 2009

Federal legislation (Public Law 111-97, Military Spouses Residency Relief Act) enacted on November 11, 2009, may affect your state personal income tax liability if you accompany your military spouse to another state where he or she is present in compliance with military orders. Additional information on this new law will be posted on the Tax Department Web site and will also be included in Publication 361, *New York State Income Tax Information for Military Personnel and Veterans - For tax year 2009*, when it becomes available.

## 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 New York State 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 residents* on page 8 of this publication).

Taxpayers who are New York State residents for income tax purposes file a New York State resident return using Form IT-150, *Resident Income Tax Return* (short form), or Form IT-201, *Resident Income Tax Return* (long form).

You may also report the amount of New York State and local sales and use tax that you owe, if any, on your personal income tax return. For information on filing and paying sales and use tax, see *Sales or use tax* on page 17.

## Definitions

The following definitions are applicable 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 effect a change of 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 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 and usually includes a residence your husband or wife owns or leases.

For additional information, see TSB-M-09(2)I, *Amendments to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations*, and TSB-M-09(15)I, *Amendment to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations Relating to Certain Undergraduate Students*.

**Resident**

The Tax Law relating to the definition of a resident, nonresident, and part-year resident has been amended for purposes of determining if a taxpayer who is domiciled in New York State, but is out of the country for at least 450 days out of 548 consecutive days, is considered a New York State nonresident for personal income tax purposes. This rule is commonly referred to as *the 548-day rule*.

For tax years beginning on or after January 1, 2009, a taxpayer who is domiciled in New York State will not meet the conditions to be considered a nonresident for personal income tax purposes under the 548-day rule if the taxpayer's spouse (unless legally separated) and minor children are in New York State for more than 90 days of the 548-day period, **regardless of where the spouse and minor children spend their time in New York State**. Previously, a taxpayer did not meet these conditions if the taxpayer's spouse or minor children spent more than 90 days of the 548-day period in New York State at a permanent place of abode maintained by the taxpayer.

The amendment does not change the other conditions considered when determining a taxpayer's resident status for income tax purposes. Therefore, for tax years beginning on or after January 1, 2009, 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** (any 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.

**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* (any 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 during any period of 548 consecutive days; and

2. You, your spouse (unless legally separated), or 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:** For purposes of determining your resident status for income tax purposes, your presence in New York does not count as a day or part of a day for purposes of 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.

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

You must file a New York State resident 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 filed 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 12. New York additions are explained in the instructions for Forms IT-150 and 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 14).

**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 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-150 or 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, you must use 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 on New York State part-year residents, see Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents*.

**Which form to file**

If you were a New York State resident for the tax year, you must use either New York State income tax return Form IT-150 or Form IT-201. A brief description of each form follows. For more information on who is required to file, see the *Who must file/which form to file?* section in the instructions for these forms.

**Form IT-150, Resident Income Tax Return (short form)**

Short Form IT-150 is a simple, two-page New York State income tax return for full-year resident taxpayers who file federal Form 1040A, *U.S. Individual Income Tax Return*, or Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*, and certain taxpayers who file federal Form 1040.

Taxpayers using Form IT-150 can claim the most common income tax credits, while avoiding the complexities of the long Form IT-201.

You may use Form IT-150 if:

- You were a New York State resident for the entire year.
- Your federal adjusted gross income for the year was \$900,000 or less.
- You filed federal Form 1040EZ or 1040A (or could have, except your federal taxable income was over \$100,000).
- You were **not** a part-year resident of New York City or Yonkers (however, you may report nonresident earnings tax for Yonkers on Form IT-150).

You can claim the following tax credits on Form IT-150:

- 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, and
- New York City school tax credit.

**Form IT-201, *Resident  
Income Tax Return*  
(long form)**

If you are a full-year New York State resident and you do not qualify to file Form IT-150, you must file Form IT-201.

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 on page 11, 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 14).

## 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. In nearly all cases, you must use the same filing status that you used on your federal return. For information on the federal filing status that applies to you, access the Internal Revenue Service (IRS) Web site ([www.irs.gov](http://www.irs.gov)) or call 1 800 829-1040.

If you did not have to file a federal return, use the filing status you would have used for federal income tax purposes. For New York State purposes, the only exceptions to this rule apply to married individuals who file a joint federal return **and**:

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; reasonable efforts have been made to have your spouse sign a joint return; there exists objective evidence of alienation from your spouse such as 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*.

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.

**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.

If you itemize for New York State, you **cannot** file Form IT-150; you **must** file Form IT-201.

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 makes 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 on either Form IT-150 or IT-201. The New York standard deduction for tax year 2009 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. Certain tax credits can be claimed directly on Form IT-150 or IT-201 (see, *Which form to file* on page 10).

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;
- 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;
- Empire State commercial production credit;
- Empire State film 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;
- Industrial or manufacturing business 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, see Publication 99-IND, *General Information on New York State and New York City Income Tax Credits for Individuals for Tax Year 2009*, and Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses for Tax Year 2009*.

## Estimated income tax requirements

New York State Tax Law requires you to pay income tax during the year, either through withholding or estimated tax. If you are self-employed, if you receive a taxable pension or annuity, or if you receive any other income from which taxes are not withheld, you may have to pay estimated tax. 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 your income tax liability for the current tax year; or
- 100% of your income tax liability from the previous tax year (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, more than \$75,000), based upon a return covering 12 months.

**Note:** Due to Tax Law changes enacted in 2009, in determining whether you paid 100% (or 110%, if applicable) of the tax shown on your 2008 tax return, you must recompute your 2008 tax using the 2009 tax rates and itemized deduction rules.

You do not have to 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*, or see Publication 94, *New York State Tax Information – Should You Be Paying Estimated Tax in 2010?*



**Note:** You can now make estimated tax payments, check your balance, and reconcile your estimated income tax account by using the *Online Tax Center* on the Tax Department 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 16.

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 claim a credit against your New York State 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.

## **Sales or use tax**

You must report any unpaid sales or use tax owed for 2009 on your personal income tax return for 2009. 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) with subsequent use 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 Department of Motor Vehicles.

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 2009, 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 15, 2010. 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-150 or Form IT-201 and Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department*.

## **When to file**

You should file your 2009 income tax return and pay any amounts you owe as soon as you can after January 1, 2010, but not later than April 15, 2010. If you file late, you may have to pay interest and penalties (see page 24 of this publication). 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 by filing Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*. The filing due date for your income tax return will be automatically extended for six months if you file Form IT-370 on or before the due date of your return and pay any income

tax due with your Form IT-370. You must also pay any sales or use tax you owe at the time you request the extension.

If you have Internet access, you can complete your extension request for free from our *Online Tax Center* on the department Web site. If you use a paid preparer to file your request for an extension and the preparer will e-file your personal income tax return, the preparer must e-file your extension. If you are using tax preparation software, check your software package to see if you have the option to e-file your request for an extension.

An extension of time to file does not extend your time to pay; full payment must be made of any balance due with this automatic extension of time to file. You may pay by check, money order, electronic funds withdrawal, or credit card. If you want to make your payment by electronic funds withdrawal, which transfers funds directly from your bank account, you must use the Tax Department Web application or e-file your extension request. **Note:** A new 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.

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 16). 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.

If you will file using a paper return and you expect to receive a refund or expect to owe no New York State, New York City or Yonkers income tax, or no sales or use tax as of the due date of the return, you can file a copy of federal Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, instead of Form IT-370. When you file your New York State return, you must attach another copy of the federal extension to it.

To file your New York State extension electronically and learn about our payment options, access *Online Services* on the Tax Department Web site.

### **Automatic two-month extension**

If you qualify for an automatic two-month extension of time to file your 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 2009 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, file Form IT-370 and pay any tax due with it to receive an additional four months to file.

## **Electronic tax filing (e-filing)**

You can file your income tax return electronically (e-file) using your personal computer and an approved commercially available software package (see the Tax Department e-file Web site ([www.nystax.gov/elf](http://www.nystax.gov/elf))), or you can choose to have a tax professional e-file for 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 21 of this publication).

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 also be able to file your return yourself using the Internet.

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, credit card payment authorized, or electronic funds withdrawal made, by the filing due date.

For more information and a complete list of forms that can be e-filed, visit the Tax Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

**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:** A new 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 2009 New York State personal income tax return, or to make tax year 2010 quarterly estimated income tax payments.

For more information on the credit card program, access *Online Services* on the Tax Department Web site or refer to the instructions of the tax form you are using.

**Electronic funds withdrawal**

If you file Form IT-150 or Form IT-201 and 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-file). You must specify a payment date that is on or before April 15, 2010. If you file before April 15, 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, see the instructions for the form or tax preparation software you are using, or access *Online Services* on the Tax Department Web site.

**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 check to get lost or stolen. With direct deposit, you would receive your refund a day or two faster than if it were sent by mail. Direct deposit is more convenient since you do not have to go to the bank to make a deposit.

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

**Refund by mail**

If you compute an overpayment on your income tax return, you may choose to have the overpayment refunded by check via US mail. The Tax Department will mail your refund check to the **mailing address** listed on your income tax return.

**Estimated tax for 2010**

You have the option of applying all or a portion of your overpayment to your 2010 estimated income tax account by completing the appropriate line(s) on your income tax return. If you choose to apply all or a portion of your overpayment to your 2010 estimated income tax, you generally cannot change that decision after April 15, 2010.

**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; if you 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; if you defaulted on a governmental education loan, state university, or city university loan; or if you 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.

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 your income, deduction, credit, 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 2009 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 2009 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**

Chapters 57 and 59 of the Laws of 2009 amended the Tax Law to enact a package of provisions that are intended to increase compliance with the Tax Law and to improve the department's ability to enforce the payment of all taxes that are due and owing. For a complete summary of these amendments, see TSB-M-09(12)C,(12)I,(11)M,(4)MCTMT,(8)R,(17)S, *Amendments That Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*.

## **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**

You may be subject to a penalty for underpayment of estimated income tax if your 2009 withholding and estimated income tax payments do not equal:

- at least 90% of your 2009 income tax; or
- 100% of your 2008 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, more than \$75,000), based upon a return covering 12 months. **Note:** To meet this condition, the tax shown on your 2008 return must be recomputed using 2009 tax rates and itemized deduction rules.

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, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries*, and its instructions (Form IT-2105.9-I).

### **Negligence penalty**

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.

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.

### **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.

**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 2009 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 for your 2009 tax return(s) will end automatically one year after the later of the return due date (including any extension) or the date you filed your 2009 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 (for example, Form POA-1-IND, *Power of Attorney for Individuals*), but 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 the Tax Department 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 the Tax Department 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 you 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](http://www.nyc.gov/consumers)) or dial 311 (212-NEW-YORK if you are outside New York City).

**New York State tax forms and publications**

New York State forms and publications can be accessed on the Tax Department Web site. You may also request most of the documents listed below by calling (518) 457-5431.

**New York State tax forms**

The following is a list of New York State tax forms referred to in this publication:

- Form IT-150, *Resident Income Tax Return* (short form)
- Form IT-201, *Resident Income Tax Return* (long form)
- Form IT-201-ATT, *Other Tax Credits and Taxes*
- Form IT-201-V, *Payment Voucher for E-Filed Income Tax Returns*
- Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*
- Form Y-203, *Yonkers Nonresident Earnings Tax Return*

- Form IT-360.1, *Change of City Resident Status*
- Form IT-112-R, *New York State Resident Credit*
- Form IT-112-C, *New York State Resident Credit for Taxes Paid to a Province of Canada*
- Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*
- Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals*
- Form IT-2105.9, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries*
- Form IT-280, *Nonobligated Spouse Allocation*
- Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*
- Form POA-1-IND, *Power of Attorney for Individuals*
- Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*

**New York State tax publications**

The following is a list of New York State tax publications referred to in this publication:

- Publication 46, *Common Reasons for Income Tax Adjustments*
- Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents – For tax year 2009*
- Publication 89, *Innocent Spouse Relief (And Separation of Liability and Equitable Relief)*
- Publication 94, *New York State Tax Information – Should You Be Paying Estimated Tax in 2009?*
- Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses – For tax year 2009*
- Publication 99-IND, *General Information on New York State and New York City Income Tax Credits for Individuals – For tax year 2009*

- Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*
- Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*
- Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department*

New York State Tax Department

# **Online Services**

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

- make payments
- file certain returns
- view and change account  
information

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

***[www.tax.ny.gov](http://www.tax.ny.gov)***



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## Notes

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## Need help?



Visit our Web site at **[www.tax.ny.gov](http://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.