



Publication 361
New York State
Income Tax Information for
Military Personnel and
Veterans

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

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Section I. General information

This publication provides information about New York State income tax for members of the United States armed forces and the New York State organized militia in active service, military spouses, and veterans.

It will help you understand what is meant by a New York State *resident* and *nonresident*, and explains who must file a New York State income tax return. [Tax information for military personnel](#) is also available on our Web site.

For federal tax information, see Internal Revenue Service (IRS) [Publication 3](#), *Armed Forces Tax Guide*.

Note: The Marriage Equality Act was signed into law as Chapters 95 and 96 of the Laws of 2011. One purpose of the Marriage Equality Act is to provide that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under all laws of the state. Accordingly, the Marriage Equality Act applies to all taxes administered by the Tax Department. Therefore, for purposes of this publication, the term *spouse* should be read as gender-neutral and includes a person in a marriage with a same-sex spouse or a different-sex spouse.

Resident status

To determine your resident status, you have to consider where your domicile was and where you maintained a permanent place of abode during the tax year.

The following definitions of *domicile* and *permanent place of abode* will help you determine your resident status for income tax purposes.

Domicile – In general, your *domicile* is the place that 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 assignment, education leave, or military assignment).

You can have only **one** domicile. Your domicile does not change until you move to a new location and definitely intend to make your permanent home there. If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), your domicile does not change.

Military assignments do not affect your domicile. For example, if your domicile was New York State when you entered the military, you are still domiciled in New York State even if you are assigned to duty in another state or country.

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

Determining whether an individual in the military maintains a permanent place of abode does not depend solely upon whether the individual lives on or off a military base. This is only one of many factors to be considered. Other factors include the type and location of quarters occupied by the individual and members of the individual's immediate family, as well as how and by whom those quarters are maintained.

Barracks, bachelor officers' quarters, quarters assigned on vessels, or any structure that contains only bachelor/bachelorette-type quarters and does not contain facilities ordinarily found in a dwelling (such as facilities for cooking or bathing) generally do not qualify as permanent places of abode maintained by an individual in the military.

Also, if you maintain a place of abode, it will **not** be considered permanent if it is maintained only during a temporary duty assignment.

New York State resident

If your domicile was New York State when you entered the military but you were later assigned to another state or country, your domicile does not change. Accordingly, you generally will remain a New York resident for income tax purposes. However, if you meet **all three** of the conditions in **either** Group A or Group B (below) you are considered a *nonresident* for the tax year:

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 (any part of a day is a day for this purpose) during any period of 548 consecutive days; and
2. you, your spouse (unless legally separated) and minor children spent **90 days or less** (any 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. This condition is illustrated by the following formula:

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

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

1. You are present in New York on a day for the sole purpose of boarding a plane, ship, train, or bus for a destination outside New York State.
2. You are present in New York to continue 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 present in New York to seek treatment for an illness at a New York medical facility or you are confined to a New York nursing home facility.

Nonresident

If your domicile was **not** New York State when you entered the military and you are assigned to active duty in New York State, you are considered to be a nonresident for New York State income tax purposes while you are in the military, even if you establish a permanent place of abode here.

Part-year resident

Generally, a military service member would not be considered a part-year resident. However, if you moved into or out of New York State during the tax year, either before you entered the military or after you left the military, you may be considered a part-year resident for New York State income tax purposes.

Members of the New York State organized militia

The New York State organized militia includes the New York Army National Guard, the New York Air National Guard, the New York Naval Militia, and the New York Guard.

As a member of the New York State organized militia, you are entitled to a New York subtraction modification in computing your New York adjusted gross income (AGI) if your federal AGI includes any pay received for performing active service within New York State due to:

- state active duty orders issued under New York Military Law section 6.1, or
- active service of the United States pursuant to federal active duty orders, for service other than training, issued under United States Code Title 10.

However, income received for regular duties in the organized militia (for example, pay received for the annual two-week training program) does not qualify for this subtraction modification.

Military pensions and veterans benefits

Military pension payments received by retired military personnel or their beneficiaries are totally exempt from New York State tax.

Benefits paid to, or on account of, a veteran or beneficiary under the laws relating to veterans, are treated the same for New York State tax purposes as for federal tax purposes. If these amounts are excluded from gross income for federal income tax purposes, they are not subject to New York State income tax.

The Military Spouses Residency Relief Act of 2009 (MSRRA)

The Military Spouses Residency Relief Act of 2009 (MSRRA) (Public Law 111-97) provides that the spouse of a servicemember cannot lose or acquire a residence or domicile for income tax purposes when he or she is present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.

The application of this act to the New York State personal income tax is explained below. For the application of this act to New York City and Yonkers personal income taxes, substitute New York City or Yonkers, if applicable, in place of New York State.

New York State resident military spouses

If you are a New York State resident military spouse and you move to another state solely to be with your servicemember spouse when the servicemember is in that state in compliance with his or her military orders, any income you earn for services performed in that other state is not subject to income tax in that other state. However, the MSRRA does not relieve you of the obligation to file a New York State income tax return or pay New York income tax, if applicable. For information on filing requirements for New York residents, see *Form IT-201, Resident Income Tax Return*, on page 11.

In addition, if you are employed or operate a business in another state, you may have to pay estimated tax to New York State if you are required to file a New York State resident personal income tax return.

- If you are an employee, you should determine whether or not your employer will withhold New York State personal income tax from

your wages. If your employer does not withhold New York taxes, you may be required to make estimated personal income tax payments to New York State to ensure that you have not underpaid for the year and to avoid being subject to the underpayment penalty.

- If you are a self-employed individual, you should also determine if you are required to make or increase the amount of estimated personal income tax payments you make to New York State to ensure that you have not underpaid for the year and to avoid being subject to the underpayment penalty.

For more information, see *Estimated income tax* on page 10.

Note: If a nonresident servicemember enters New York State in compliance with military orders and marries a New York State resident, the New York resident spouse would continue to be a New York State resident for personal income tax purposes until such time as he or she establishes a domicile and becomes a resident in a state other than New York State.

Nonresident military spouses

If you and your servicemember spouse were residents or domiciliaries in a state other than New York State prior to being located in New York, and you are present in the state solely to be with your servicemember spouse who is in the state in compliance with his or her military orders, you will **not** be considered a resident of New York State for income tax purposes even if you establish a permanent place of abode here. Furthermore, under MSRRA, income earned in New York State by a nonresident military spouse is not subject to New York State income tax.

For purposes of the MSRRA exemption, income earned in New York State includes:

- wages, salaries, and other compensation for services performed by a military spouse in New York State as an employee; and
- any business income or loss (other than a capital gain or loss from the sale of real property located in New York State) a military spouse has from a sole proprietorship carried on in New York State or from a partnership, including an LLC treated as a partnership, where the partnership or the LLC carries on business in New York State, if the income or loss or any part of the income or loss is required to be included in the computation of net earnings from self-employment for purposes of the federal self-employment tax (SE tax).

Example: A servicemember from Georgia is ordered to active duty in New York State. The servicemember's spouse accompanies him/her from their home in Georgia to New York solely to be with the servicemember. The spouse obtains employment at a neighborhood store. The spouse is

not considered a New York State resident and the income the spouse receives is not subject to New York State tax.

If you have met the conditions for relief under the MSRRA rules, and your servicemember spouse is subsequently assigned outside the United States or to another state, and you remain in New York State, the rules will continue to apply as long as New York State remains your spouse's permanent United States duty station. However, the rules will no longer apply if your spouse's permanent United States duty station is no longer in New York State and you remain in New York State.

If your wages are exempt from New York tax under the MSRRA, you may claim an exemption from New York withholding by submitting a properly completed [Form IT-2104-E](#), *Certificate of Exemption from Withholding*, to your employer.

Note: The MSRRA does not relieve you of the obligation to file an income tax return or pay income tax to your home state if your home state has an income tax. You should check with your home state for its requirements.

Section II. New York resident members of the armed forces

Taxability of military pay for residents

If you are a New York resident, your military pay is subject to New York State income tax.

Your military pay is taxable on your New York State return in the same way it is taxable on your federal return. However, the following types of military pay are not subject to New York State income tax:

- combat zone pay (see *Combat zone, qualified hazardous duty area, and contingency operations* on page 17); and
- compensation or bonuses for active service while a prisoner of war or missing in action during the Vietnam conflict.

In addition, income received for performing **active** duty service within New York State as a member of the New York State organized militia may not be taxed on your New York State return (see *Members of the New York State organized militia* on page 6).

Tuition payments, subsistence allowances, and any other benefits paid to, or on account of, a veteran or beneficiary under the laws relating to veterans, are treated the same for New York State tax purposes as for federal tax purposes. If these amounts are excluded from gross income for federal income tax purposes, they are not subject to New York State income tax.

Pension payments received by retired military personnel or their beneficiaries are totally exempt from New York State tax.

New York City and Yonkers residents: New York State administers the New York City and Yonkers personal income taxes. If you were a New York City or Yonkers resident when you entered the military and your military pay is subject to New York State income tax, it is also subject to the New York City or Yonkers resident tax. However, if you meet the conditions for nonresident status in Group A or Group B (see page 5), your military pay is not subject to New York City or Yonkers income taxes.

Income tax withholding

If you are a New York State resident, your military pay is subject to withholding of New York State income tax (and, if applicable, New York City or Yonkers income taxes). However, if you think that you will meet all three of the conditions for nonresident status in Group A or Group B, beginning on page 5 of this publication, you can request that no New York State income tax be withheld from your pay. Complete New York State Tax Department [Form IT-2104-MS](#), *New York State Withholding Exemption Certificate for Military Service Personnel*, or Department of Defense Form 2058-1, *State Income Tax Exemption Test Certificate*, and file it with your military finance officer. Do not send either form to New York State.

If the amount withheld from your pay is more than the total New York State, New York City, and Yonkers income tax you owe, you must file [Form IT-201](#), *Resident Income Tax Return*, with the Tax Department to claim a refund.

Estimated income tax

Estimated income tax is the amount of New York State, New York City, and Yonkers income tax you expect to owe for the year after subtracting the amount of tax you expect to have withheld and the amount of any credits you plan to take.

You may be required to make estimated income tax payments if you have taxable income from any of the following sources and no income tax is withheld:

- self-employment,
- certain pension/annuity income,
- prize winnings,
- capital gains,
- interest income,
- dividend income,
- lottery and horse racing proceeds,
- rental income,
- windfall income (any unanticipated income),
- gains from certain sales made by individuals, or

- income derived from New York sources from partnerships or New York S corporations.

However, you do not need to pay estimated income tax if:

- you expect to owe less than \$300 of New York State, \$300 of New York City, and \$300 of Yonkers income tax after subtracting any tax withheld and credits that you are entitled to claim; and
- you expect your tax withheld during the tax year to be at least:
 1. 90% of the personal income tax shown on your current tax year's return; or
 2. 100% of the personal income tax shown on the prior year's return (110% of that amount if you are not a farmer or a fisherman and the New York adjusted gross income (AGI) shown on that return is more than \$150,000, or, if married filing separately for the current tax year, more than \$75,000). However, if you did not file a New York State tax return for the prior tax year, or your prior year return did not cover all 12 months, item 2 does not apply.

Do not include in your estimate any amount of [sales or use tax](#) you expect to owe on your personal income tax return.

You can make estimated tax payments, check your balance, and reconcile your [estimated income tax account online](#) through our Web site. Estimated tax payments may also be made by check or money order.

If the amount of estimated tax you paid is more than the New York State, New York City, and Yonkers income tax you owe, you must file Form IT-201 to claim a refund.

For more information, visit our Web site or see the [instructions](#) for [Form IT-2105](#), *Estimated Income Tax Payment Voucher for Individuals*.

Form IT-201, Resident Income Tax Return

If you are a New York State resident and you meet **any** of the following conditions, you must file a New York State personal income tax return using [Form IT-201](#), *Resident Income Tax Return*:

- You have to file a federal income tax return.
- You did not have to file a federal return but your federal adjusted gross income plus New York additions was more than \$4,000 (\$3,000 if you are single and can be claimed as a dependent on another taxpayer's federal return).
- You want to claim a refund of any New York State, New York City, or Yonkers income taxes withheld from your pay.

- You want to claim a refund or carryover of any New York State, New York City, or Yonkers [income tax credits](#).
- You are subject to the minimum income tax.
- You are subject to the separate tax on lump-sum distributions.

Report any New York City or Yonkers resident tax due on your Form IT-201.

New York tax credits

You may be able to reduce your income tax liability by claiming certain tax credits. For information on New York State and New York City [income tax credits](#), visit our Web site.

Section III. Nonresident members of the armed forces

Taxability of military pay for nonresidents

As a nonresident, your military compensation is **not** subject to New York State income tax. However, other income that you receive from [New York State sources](#) may be subject to tax. For example:

- If you have a civilian job in New York State during your off-duty hours, the income you receive is subject to income tax.
- Income or gain from property located in New York State, or from a business, trade, or profession carried on in New York State, is also subject to tax.

Estimated income tax

You may be required to make estimated income tax payments if you have income from New York sources and no income tax is withheld. Estimated income tax is the amount of New York State income tax you expect to owe for the year after subtracting:

- the amount of tax you expect to have withheld;
- any estimated income tax paid with [Form IT-2663](#), *Nonresident Real Property Estimated Income Tax Payment Form*;
- any estimated income tax paid with [Form IT-2664](#), *Nonresident Cooperative Unit Estimated Income Tax Payment Form*;
- any estimated income tax paid on your behalf by a partnership or S corporation with [Form IT-2658](#), *Report of Estimated Tax for Nonresident Individual Partners and Shareholders*; and
- the amount of any credits you plan to take.

However, you do not need to pay estimated income tax if:

- you expect to owe less than \$300 of New York State, \$300 of New York City, and \$300 of Yonkers income tax after subtracting any tax withheld and credits that you are entitled to claim; and
- you expect your tax withheld during the tax year to be at least:

1. 90% of the personal income tax shown on your current tax year's return, or
2. 100% of the personal income tax shown on the prior year's return (110% of that amount if you are not a farmer or a fisherman and the New York adjusted gross income (AGI) shown on that return is more than \$150,000, or, if married filing separately for the current tax year, more than \$75,000). However, if you did not file a New York State tax return for the prior tax year, or your prior year return did not cover all 12 months, item 2 does not apply.

Do not include in your estimate any amount of [sales or use tax](#) you expect to owe on your personal income tax return.

You can make estimated tax payments, check your balance, and reconcile your [estimated income tax account online](#) through our Web site. Estimated tax payments may also be made by check or money order.

If the amount of estimated tax you paid is more than the New York State, New York City, and Yonkers income tax you owe, you must file [Form IT-203](#), *Nonresident and Part-Year Resident Income Tax Return*, to claim a refund.

For more information, visit our Web site or see the [instructions](#) for [Form IT-2105](#), *Estimated Income Tax Payment Voucher for Individuals*.

**Form IT-203,
Nonresident and
Part-Year
Resident Income
Tax Return**

If you are a New York State nonresident and you meet **any** of the following conditions, you must file a New York State personal income tax return using [Form IT-203](#), *Nonresident and Part-Year Resident Income Tax Return*:

- You have income from a [New York source](#) and your New York AGI is more than your New York State [standard deduction](#).
- You want to claim a refund of any New York State, New York City, or Yonkers income taxes withheld from your pay.
- You want to claim any of the New York State, New York City, or Yonkers refundable or carryover [income tax credits](#).
- You are subject to the minimum income tax on tax preference items derived from or connected with New York sources ([Form IT-220](#), *Minimum Income Tax*).
- You were a part-year resident and you are subject to a separate tax on any lump-sum distributions for your resident period derived from or connected with New York sources ([Form IT-230](#), *Separate Tax on Lump-Sum Distributions*).
- You incurred a net operating loss (NOL) for New York State personal income tax purposes for the tax year, without incurring a similar NOL for federal income tax purposes.

New York tax credits

You may be able to reduce your income tax liability by claiming certain tax credits. For information on New York State and New York City [income tax credits](#), visit our Web site.

Special instructions

If your domicile was New York State when you entered the military **and**:

- You meet **all three conditions in Group A** (see page 5) for the tax year, you will be treated as a New York State nonresident for the full tax year.

You may claim a refund of any New York State income tax withheld from your military pay by filing Form IT-203 with the department. You must include an explanation that contains all of the following:

1. a statement that you did not have a permanent place of abode in New York State during the tax year;
2. the location and a brief description of the permanent place of abode you maintained outside New York State, and the beginning and ending dates of your stay there; and
3. the exact number of days you were in New York State during the tax year.

Or

- You meet **all three of the Group B conditions** (beginning on page 5), you will be treated as a nonresident for the entire 548-day period.

You must file Form IT-203 for the tax year in which the 548-day period began. For the part-year resident period, include any items of income, gain, loss, or deduction received or accrued up to the time of change of residence. For the nonresident period, include any items of income, gain, loss, or deduction derived from or connected with New York State sources. You may also be required to file Form IT-203 for the year you return to New York State.

Section IV. Filing your return

When to file your return

As a member of the armed forces, you generally must file your New York State return at the same time and in the same manner as any other taxpayer. File your return after January 1, but not later than April 15.

If a due date (including extensions) falls on a Saturday, Sunday, or legal holiday, you may file on the next business day.

Note: Military personnel serving in a combat zone, qualified hazardous duty area, or contingency operation see page 17.

Automatic two-month extension of time to file

If you qualify for an automatic two-month extension of time to file your federal income tax return because you are stationed in a foreign country when your return is due, you are entitled to a similar automatic two-month extension to file your New York income tax return (until June 15).

You do not have to request or apply for this two-month extension. The time to pay your New York State, New York City, and Yonkers income taxes, and any New York State or local sales or use tax you owe, is also automatically extended to June 15. However, interest on any balance of tax you owe must be paid from the April 15 original due date of your return to the date of payment.

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

Automatic six-month extension of time to file

If you cannot meet the due date and you need more time to file your return, you may request an automatic six-month extension of time to file by:

- using our Web site to [file your extension](#) request for free;
- using tax preparation software (check your software package to see if you have the option to e-file your request for an extension);
- filing Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*; or
- using a paid tax preparer to file an extension for you. (If the paid tax preparer will also be preparing your personal income tax return and he or she is required to e-file that return, the preparer must e-file your extension request.)

The filing due date for your income tax return will be automatically extended for six months (until October 15 for calendar year filers) if you file your request for an extension on or before the due date of your return and pay any income tax and/or local sales or use tax you owe with your request.

An automatic six-month extension of time to file does not extend your time to pay. Depending on the filing method you choose, you may pay by check, money order, electronic funds withdrawal, or credit card. Failure to make full payment of tax due could result in penalty and interest charges.

For more information on your payment options, visit our Web site.

**Automatic extension
for death of a spouse**

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

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

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

Free File. Certain software companies offer free e-filing (Free File) as a service to active duty military personnel who meet certain eligibility criteria.

You must access the Tax Department Web site and use the [Free File](#) links provided to access software vendor sites that offer free e-filing for both federal and New York State personal income tax returns.

Electronic filing mandate for individuals. Effective for tax returns filed on or after January 1, 2013, if you prepare your personal income tax return using tax software, you are generally required to e-file.

E-filing is faster and more accurate than paper filing. You can e-file your income tax return using your personal computer and an approved, commercially available software package or you can choose to have a tax professional e-file for you.

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

E-filing is the fastest way to receive your refund. The speed and accuracy of computers allow electronic returns to be processed faster than paper returns, and using tax preparation software greatly reduces the potential for errors. To receive your refund even faster, you may choose to have it deposited directly into your savings or checking account.

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 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 your money order must be mailed, your credit card payment

authorized, or your electronic funds withdrawal made, by the filing due date.

For more information on [e-file](#) visit our Web site.

Late returns

If you have not filed your required income tax return(s) or paid any taxes you owe because of your military service, do so as soon as possible. Submit with your return(s) and payment(s) a statement that you were on active duty at the time, and include the exact dates of your duty. This information may allow the department to accept your late return(s) or payment(s) without imposing penalties.

If there is an excessive or unreasonable delay between the time you leave the service or are relieved from active duty, and the time you file your return(s) or pay your tax(es), you will be subject to penalties and interest charges.

Note: Military personnel serving in a combat zone, qualified hazardous duty area, or contingency operation: see below.

Section V. Combat zone, qualified hazardous duty area, and contingency operations

If you are a member of the armed forces or support personnel who served or are currently serving in a combat zone or qualified hazardous duty area (hereafter: *combat zone*), or are serving in a contingency operation deployed outside the United States, the following New York State tax relief provisions are available to you.

Extension of time to file returns and other extended actions

Extension of time to file – The deadline for filing your New York State income tax return and paying your tax due, or filing an amended return to request a refund, is automatically extended for at least 180 days* after the later of:

- the last day you are in a combat zone or serve in a contingency operation (or the last day the area qualifies as a combat zone or the operation qualifies as a contingency operation); **or**
- the last day of hospitalization inside or outside New York State as a result of an injury received while serving in a combat zone or contingency operation.

*In addition, any days of the filing period that were left when you entered the combat zone are added to the 180 days to find the last day allowed for timely filing your New York State income tax return or amended tax return (see examples on page 18).

If you qualify for an extension of time to file your return under the combat zone or contingency operation relief provisions, enter the special condition code **C7** in the space provided on your tax return.

Example 1: *You were deployed to an area designated as a combat zone on November 1, 2012. You left the combat zone on May 16, 2013. Generally you would be required to file your 2012 New York State personal income tax return by April 15, 2013. However, because you were serving in a combat zone your filing due date is automatically extended 285 days (180 plus 105 additional days). Accordingly, you would have until February 25, 2014, to file your 2012 New York State income tax return and pay any tax due.*

The 105 additional days (January 1, 2013, through April 15, 2013) are the number of days in the original filing period for a 2012 tax return that were left when you entered the combat zone.

Example 2: *You need to file an amended 2008 New York State return to claim a refund. You filed your original return and paid the tax due on the due date, April 15, 2009. Generally, you would be required to file an amended return within three years of the date that the original return was filed, or within two years of the date the tax was paid, whichever is later. Therefore, your amended 2008 New York State return would have been due no later than April 17, 2012¹.*

However, because you served in a combat zone from November 1, 2011, to August 4, 2012, the deadline for filing your amended 2008 New York return to claim a refund is extended to 349 days (180 plus 169 additional days) after your last day in the combat zone. Accordingly, you would have until July 19, 2013, to file your amended 2008 return.

The 169 additional days (November 1, 2011, through April 17, 2012) are the number of days in the three-year period for filing a refund claim that were left when you entered the combat zone.

Other extended actions – The extensions that apply to filing returns (described on page 17) also extend the date for the taxpayer or the department to perform the following actions:

- Paying of personal income taxes and any sales or use tax reportable on a personal income tax return.
- Filing a petition with the Division of Tax Appeals for a credit or refund, or for review by an administrative law judge or the Tax Appeals Tribunal.
- Allowing a credit or refund of income tax by the department.
- Filing a claim for credit or refund of income tax.
- Assessment of any income tax by the department.

¹ April 15, 2012, is a Sunday and April 16, 2012, is a holiday, therefore, you may file on the next business day.

- Giving or making any notice or demand by the department for the payment of any income tax.
- Collection by the department of any income tax due.
- Bringing suit by the department for any income tax due.

If the department takes any action covered by these provisions or sends you a notice of examination before learning that you are entitled to an extension, contact the department or your legal assistance office.

No penalties or interest will be imposed for failure to file a return or pay taxes during the extension period.

Spouses and dependents of individuals who served in a combat zone or served in a contingency operation are entitled to the same extensions with the following exception: the extension does not apply to a spouse or dependent for any tax year beginning more than two years after the date the area ceases to be a combat zone or the area ceases to be a contingency operation.

Signing and filing of the return by a spouse

Married couples filing a joint return – If you are serving in a combat zone or contingency operation and are unable to sign your joint personal income tax return, your spouse may sign and file the return on your behalf if your spouse has a power of attorney.

If your spouse does not have a power of attorney, your spouse may still sign and file the return on your behalf. However, he or she must submit a signed statement with the return explaining that you are serving in a designated combat zone or a contingency operation and are therefore not available to sign the return. Your spouse must write **COMBAT ZONE** on the top of the return.

This option applies only to joint returns. It is not available to married couples filing separate returns.

Hostile fire pay

If you qualified for hostile fire pay for providing services in direct support of a combat zone military operation in an area not designated as the combat zone, you are deemed to have served in the combat zone for that period of qualifying service and you are entitled to the combat zone tax relief provisions.

Interest on refunds

We will pay interest on refunds back to the original due date for returns filed after April 15, but on or before your extended due date.

Exemption for military pay

Any income received by a member of the armed services of the United States for service in an area designated as a combat zone is exempt from New York State, New York City, and Yonkers taxes. If you included any combat zone pay in your federal adjusted gross income, you are

entitled to a New York subtraction modification for that income in computing your New York adjusted gross income.

Tax forgiveness for decedents

If a member of the armed forces dies while serving in a combat zone or as a result of injuries received while serving in a combat zone, no New York State tax (or applicable penalties) will be imposed for any tax year the decedent served in the combat zone. In addition, we will waive any unpaid tax or penalties for years prior to service in the combat zone.

If the deceased paid any tax while in the combat zone, we will refund the full amount of the tax paid to the estate or the surviving spouse. If any tax was assessed but not paid, we will cancel the assessments.

Procedures for claiming forgiveness – If the individual dies while serving in a combat zone or as a result of injuries received while serving in a combat zone, use the following procedures for filing a claim for income tax forgiveness.

- For tax years 2012 and after, file Form IT-201 or Form IT-203. Include federal Form(s) W-2 (even if no New York tax was withheld); and Forms 1099-R, 1099-G, and W-2G, if applicable and New York tax was withheld. Enter special condition code **K2** in the space provided on the return.
- For tax years prior to 2012, file Form IT-201 or Form IT-203 if a tax return has not been filed for the tax year and include Form IT-2, *Summary of W-2 Statements*. Enter special condition code **K2** in the space provided on the return.
- To amend an already filed return, file Form IT-150-X, *Amended Resident Income Tax Return (short form)*², Form IT-201-X, or Form IT-203-X. A separate return must be filed for each eligible year. Enter special condition code **K2** in the space provided on the amended return.

A statement showing the computation of the decedent's tax liability before any amount is forgiven and the amount that is to be forgiven should be included with any return or claim. For joint returns, see *Joint returns* on page 21.

If the provisions apply to a prior year's tax that has been paid and the period for filing a claim for a refund is still open, the tax will be refunded. Generally, the period for filing an amended return claiming a refund of tax is three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

² Form IT-150, *Resident Income Tax Return (short form)* was discontinued for tax years after 2010. Form IT-150-X, *Amended Resident Income Tax Return (short form)*, may be used to amend an original Form IT-150 that was filed for a tax year prior to 2011.

For returns claiming a refund – A certification from the Department of Defense (for example, Department of Defense Form DD 1300, *Report of Casualty*) must be filed with any returns claiming a refund.

The certification must include the deceased individual's name and social security number, the date of injury, the date of death, and a statement that the individual died in a combat zone or as a result of injuries received while serving in a combat zone. If the certification has been received but there is not enough tax information to file a timely claim for refund, file the return or amended return with the information you do have. Include a statement saying that an amended claim will be filed as soon as the necessary tax information is available.

Joint returns – Only the decedent's part of the tax liability is eligible for income tax forgiveness. To determine the decedent's portion of the joint liability, allocate income, deductions and New York addition and subtraction modifications in the same manner they would have been allocated if the spouses had filed separate returns. Allocate wages and salaries to the spouse who performed the services and received the Form W-2. Allocate personal deductions, such as itemized deductions for mortgage interest and taxes, equally between the spouses unless there is evidence that shows a different allocation is appropriate. When computing the total tax as if a separate return had been filed, allocate credits and other taxes, if any, in the same manner as they would have been allocated if the spouses had filed separate returns. Compute the tax liability that is eligible for the refund as follows:

1. Compute the decedent's total tax as if a separate return had been filed.
2. Compute the surviving spouse's total tax as if a separate return had been filed.
3. Multiply the joint tax liability by a fraction, whose numerator is the amount in item 1 and whose denominator is the total of items 1 and 2.

The result of item 3 is the amount eligible for a refund. If you are unable to compute the amount, you should include a statement of all income and deductions, indicating the part that belongs to each spouse. The Tax Department will determine the amount to be refunded.

Areas designated as combat zones, qualified hazardous duty areas, or contingency operations

An area usually becomes a combat zone, and ceases to be a combat zone, on the date the President designates by Executive Order. A *contingency operation* is a military operation that is designated as such by the Secretary of Defense or results in calling members of the uniformed services to active duty (or retains them on active duty) during a war or a national emergency declared by the President or Congress.

For a list of the areas currently designated as combat zones and qualified hazardous duty areas by Executive Order of the President of the United States, visit the IRS Website (www.irs.gov).

If you are or were a member of the armed forces or support personnel serving in a combat zone or qualified hazardous duty area, you are entitled to the New York State tax relief provisions as described in Section V. *Combat zone, qualified hazardous duty area, and contingency operations* beginning on page 17.

Section VI. Other New York State tax relief for active duty military personnel

Military personnel qualifying to defer the payment of back income taxes

If you are a reservist called to active duty or a regular military member (regardless of the location in which you are serving), you may qualify to defer the payment of back income taxes. To qualify, you must show that your ability to pay the back taxes has been materially impaired. You must have received a notice of tax due, or be on an installment payment agreement with New York State, before applying for the deferral.

If you have received a billing or collection document and believe that you qualify for this deferral, please write *Military Duty Deferral Request* on the top of the document received, include an explanation concerning how your military service has created an inability to pay, and send the document and explanation back to the department.

If you currently have an installment payment agreement or make automated payments with the department and believe that you qualify, please contact our Collections and Civil Enforcement Division at (518) 457-5434 and inform the representative about your situation.

Interest rate benefit

If you are an active duty member of the Army, Navy, Air Force, Marine Corps, or Coast Guard who has a New York State tax liability, and your service has materially affected your ability to pay the liability, you may be eligible for an interest rate benefit under the Federal Soldiers' and Sailors' Civil Relief Act (the Act). Section 526 of the Act limits the maximum interest rate that can be charged to 6% per year for obligations or liabilities incurred before entry into active service. The reduced rate applies only if the service materially affects your ability to pay, and only applies to the interest charged during your period of active duty. Reservists, including the National Guard, must be placed on active duty to

qualify. National Guard personnel not serving in a federalized status (for example, on state active duty for disaster relief) are not covered by the Act and are therefore not eligible for this relief.

If you have received a billing or collection document and believe that you qualify for this benefit, please write ***Military Duty Interest Reduction Request*** on the top of the document received, and send the document back along with a copy of your active duty orders.

New York State Tax Department

Online Services

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

- make payments
- file certain returns and other tax forms
- view your account and filing information
- change your address
- receive email notifications
- respond to bills and notices

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

www.tax.ny.gov



Free e-file! Active duty military personnel may be eligible to e-file their New York State income tax return for free through the Free File Alliance. This program provides access to free tax preparation software and free e-filing. Please visit us on the Web at www.tax.ny.gov for more information and to access this free service.

Need help?



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

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



Telephone assistance

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

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

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



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



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