

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-94 (6) I
Income Tax
March 23, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I931101A

On November 1, 1993, a Petition for Advisory Opinion was received from Stuart Nathanson, c/o Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022.

The issue raised by Petitioner, Stuart Nathanson, is whether an employer is required to send a copy of form IT-2104 to the New York State Department of Taxation and Finance when more than 14 exemptions have been claimed on a W-4, where the employee wants the New York State personal income tax withholding to be based on the same number of exemptions as for Federal income tax withholding purposes.

A corporation received a properly completed Form W-4 with allowances in excess of 10 from an employee. The employer submitted the Form W-4 to the Internal Revenue Service as required. A New York State Form IT-2104 was not completed by the employee, since the employee wanted the same number of allowances for both Federal and state purposes.

Section 671(a) of the Tax Law provides that every employer maintaining an office or transacting business within New York State and making payment of any wages taxable under Article 22 of the Tax Law shall deduct and withhold income tax from such wages for each payroll period. The method of determining the amount to be withheld shall be prescribed by regulations of the Commissioner of Taxation and Finance.

Section 171.4(d) of the Income Tax Regulations (hereinafter "Regulations") states:

(1) In determining the proper New York State personal income tax to be deducted and withheld from an employee's wages, an employee is entitled to the same number of withholding exemptions as the number of New York exemptions such employee is allowed pursuant to section 616 of the Tax Law plus such additional New York State withholding allowances in accordance with forms and instructions of the Department of Taxation and Finance (see form IT-2104, **Employee's Withholding Allowance Certificate and Instructions**). In lieu of New York State form IT-2104, an employer may accept a properly completed Federal form W-4 from an employee.

(2) If an employee has not filed a Federal form W-4, or if an employee wishes to claim withholding exemptions other than those claimed for Federal income tax withholding purposes, the employer must obtain a completed **Employee's Withholding Allowance Certificate** (form IT-2104) from the employee. Such employee shall be entitled to claim only those withholding exemptions allowable on a properly completed **Employee's Withholding Allowance Certificate** (form IT-2104).

(3) If an employer is notified by the Internal Revenue Service that a Federal form W-4 for an employee is defective, then the number of exemptions allowable for New York State personal income tax withholding purposes for that employee shall be limited to the maximum number of withholding exemptions specified by the Internal Revenue Service in the written notice received from such service, less withholding allowances based on entitlement to Federal credits, plus the number of additional New York State withholding allowances claimed on a properly completed Employee's Withholding Allowance Certificate (form IT-2104).

(4) Submission of certain Employee's Withholding Allowance Certificates (form IT-2104). (i) General Rule. An employer shall submit, in accordance with subparagraph (ii) of this paragraph, a copy of any Employee's Withholding Allowance Certificate (form IT-2104), together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during a reporting period, except for the first submission under clause (ii)(c) of this paragraph, if the employee is employed by that employer on the last day of the reporting period and if the total number of withholding exemptions and allowances claimed on the Employee's Withholding Allowance Certificate (form IT-2104) exceeds 14.

Accordingly, pursuant to section 171.4(d)(1) of the Regulations, in determining the proper New York State personal income tax to be deducted and withheld from an employee's wages, an employer may accept a properly completed Federal form W-4 from an employee where the employee claims the same number of withholding exemptions for New York State as the employee claimed for Federal income tax withholding purposes. If an employer is notified by the Internal Revenue Service that a Federal form W-4 for an employee is defective, then pursuant to section 171.4(d)(3) of the Regulations the number of exemptions allowable for New York State personal income tax withholding purposes for that employee shall be limited to the maximum number of withholding exemptions specified by the Internal Revenue Service in the written notice received from such service, less withholding allowances based on entitlement to Federal credits, plus the number of additional New York State withholding allowances claimed on a properly completed Employee's Withholding Allowance Certificate.

Pursuant to section 171.4(d)(2) of the Regulations, an employee must complete and submit to his or her employer a Employee's Withholding Allowance Certificate (form IT-2104) if the employee has not filed a Federal form W-4, or if the employee wishes to claim withholding exemptions for New York State personal income tax withholding purposes other than those claimed for Federal income tax withholding purposes. In such case, the employee shall be entitled to claim for New York State personal income tax withholding purposes, only those withholding exemptions allowable on a properly completed Employee's Withholding Allowance Certificate.

Section 171.4(d)(4) of the Regulations provides that where an employee gives his or her employer a completed Employee's Withholding Allowance Certificate (form IT-2104) during a reporting period, and the employee is employed by the employer on the last day of the reporting period and if the total number of withholding exemptions and allowances claimed on the certificate exceeds 14, the employer shall submit (in accordance with section 171.4(d)(ii) of the Regulations) to the Department of Taxation and Finance a copy of such certificate (form IT-2104), together with a copy of any written statement

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received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period.

Herein, a corporation that receives a properly completed form W-4 with allowances in excess of 10 from an employee who wants the same number of allowances for both Federal and New York State income tax withholding purposes is not required to obtain from such employee, for submission to the Department of Taxation and Finance, a properly completed Employee's Withholding Allowance Certificate (form IT-2104).

DATED: March 23, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.