



Department of Taxation and Finance

Important:

The New York City nonresident earnings tax was eliminated for New York State nonresidents on or after July 1, 1999 as the result of a New York State Court of Appeals decision. Accordingly, this TSB-M cannot be relied upon for issues related to the nonresident earnings tax on or after July 1, 1999.

For information concerning other nonresident income taxes, see [Filing information for New York State nonresidents \(ny.gov\)](#).

[See *City of New York, et al., v. State of New York, et al.*, NY Court of Appeals, 94 NY2d 577, 709 NYS2d 122; Chapter 5 of the Laws of 1999.]

The TSB-M begins on page 2 below.

New York City Earnings Tax On Nonresidents - Limited Partners

Taxability of Self-Employment Income Which Has Been

Excluded From The Definition of Self-Employment

Income Under a Federal Provision.

The Income Tax Instructions and Interpretation Section has been asked to give advice as to whether income, excluded from self-employment income under the provisions of Internal Revenue Code section 1402(a)(12), is subject to the New York City Earnings Tax on Nonresidents. The specific question concerns the nonresident partner of a New York City partnership who is a limited partner and who performs no services for the partnership.

Section U46-1.0(f) of The Earnings Tax on Nonresidents provides, in part:

"(f) 'Net earnings from self-employment' means the same as net earnings from self-employment as defined in subsection (a) of section fourteen hundred two of the internal revenue code of nineteen hundred fifty-four . . ."

Section 1402(a) of the Internal Revenue Code, which defines Net Earnings from Self-Employment, was amended by P.L. 95-216 to provide a new paragraph as follows:

"(12) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services."

Section 1402(a)(12) is effective for tax years beginning after December 31, 1977.

It is our interpretation, based on the provisions of Section 1402(a)(12) of the Internal Revenue Code, that the distributive share of any item of income or loss received by a limited partner, who is a nonresident member of a New York City partnership and who does not render any services to the partnership, would not be subject to the New York City Earnings Tax on Nonresidents on such distributive share.