

1981 Legislation

Maximum Tax
Personal Service Income

Chapter 70 of the Laws of 1978 added section 603-A(b)(1) to Article 22 of the New York State Personal Income Tax Law. Section 603-A(b)(1), amended by Chapter 729 of the Laws of 1978, changed the definition of New York personal service income to mean items of income includible as personal service income for purposes of section 1348 of the Internal Revenue Code.

Chapter 1043 of the Laws of 1981, enacted on November 11, 1981, amended section 603-A(b)(1), deleting the reference to section 1348 of the Internal Revenue Code and defining New York personal service income to mean wages, salaries, professional fees and other amounts received as compensation for personal services actually rendered.

New York personal service income also includes gains (other than gains subject to capital gain treatment) and net earnings derived from the sale or other disposition of, the transfer of any interest in or licensing of the use of property (other than goodwill) if the taxpayer's personal efforts created the property.

If a taxpayer is engaged in a trade or business in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services rendered by the taxpayer shall be considered earned income.

Pension and Annuity income which arises from an employer-employee relationship or from tax deductible contributions to a retirement plan is considered New York personal service income to the extent such items of income are included in New York adjusted gross income.

Additions, required to be made to Federal adjusted gross income by shareholders of Professional Service Corporations pursuant to paragraphs (7), (8) and (9) of section 612(b) of the Tax Law, are also included in New York personal service income.

New York personal service income does not include compensation received for personal services rendered to a corporation when the compensation received represents a distribution of earnings or profits rather than a reasonable allowance as compensation for personal services actually rendered. Any amount which would have been excludible from personal service income for Federal income tax purposes for the taxable year ending December 31, 1981 had the income been includible in Federal gross income for such year, is also excludible from New York personal service income.

This amendment is applicable to tax years beginning after December 31, 1981.

This memorandum should be used in conjunction with TSB-M-78-(14)-I (Rev.) dated January 22, 1980, TSB-M-80-(6)-I dated November 17, 1980 and TSB-M-81-(12)-I dated September 1, 1981.