

Mandatory Withholding Tax on Certain Gambling Winnings

General

Chapter 61 of the Laws of 1989 amended the Tax Law and the Administrative Code of the City of New York to require withholding of New York State, City of New York and City of Yonkers personal income taxes on certain gambling winnings. Previously, withholding was voluntary and applied only to lottery winnings. The new law, explained below, parallels the federal withholding requirements and applies to payments of proceeds made on or after July 18, 1989.

Section 671(b) of the Tax Law and Section 11-1771(b) of the Administrative Code of the City of New York were amended to provide for mandatory withholding on the proceeds of lottery winnings of more than \$5,000 and on the proceeds of more than \$1,000 from pari-mutuel wagers on horse races with odds of at least 300 to 1. Proceeds are defined as the amount of the winnings less the amount of the wager. Once they become subject to withholding, proceeds are treated as if they were wages paid by an employer to an employee. Therefore, payers of gambling winnings are subject to the same filing, reporting and payment requirements as if they were employers.

The amount of tax to be withheld is computed using the highest effective rate of tax for the tax year in which the payment is made, without any allowance for deductions or exemptions. For the 1989 calendar year, the rates are 7.875% for New York State, 3.4% for New York City and 1.181% for Yonkers.

The mandatory withholding provisions apply to individuals who are residents of New York State and, if applicable New York City or Yonkers, at the time of the drawing of the prize winning lottery ticket or at the time of the payment of winnings from a wager on horse racing. Individuals already receiving installments from past lottery winnings, who would otherwise meet the criteria for mandatory withholding, will be subject to the mandatory withholding requirements for installments received on or after July 18, 1989. This withholding applies to individuals who were residents at the time of the prize winning lottery drawing and have since changed residence, as well as individuals who are still residents.

The payer determines the resident status of the individual based upon the address required to be furnished by the taxpayer on

Form IT-2102-G, Statement for Recipients of Certain Gambling Winnings. The individual must sign Form IT-2102-G (or W-2G) at the time payment is made and declare, under penalties of perjury, that the correct address is shown on the form. In lieu of Form IT-2102-G, lottery winners must fill out a New York State Lottery Claim Form with the Division of the Lottery.

If more than one resident is entitled to a share of the winnings, a copy of Form IT-340, Statement by Person(s) Receiving Gambling Winnings, must be provided at the time of signing Form IT-2102-G. Form IT-340 is also used when the recipient of the winnings is not the actual winner. The amounts reported on Form IT-340 are the same as those reported on federal Form 5754. This form will list the name, address, identification number, amount of winnings and additional winnings from any identical wagers of all persons entitled to any part of the winnings. If the winnings (including the winnings from identical wagers) are subject to New York income tax withholding, the form must be signed. The payer will use it to prepare Form IT-2102-G for each of the winners.

Information Returns

When a resident of New York State, New York City or Yonkers receives any payment of \$600 or more of gambling winnings during a calendar year, Form IT-2102-G is used to report these winnings to New York State. Amounts to be reported on Form IT-2102-G are the same as those reported on federal Form W-2G. In addition, Form IT-2102-G must be filed if any New York State, New York City or Yonkers income tax was withheld. Payers may use a packet approved by the Tax Department containing federal and state/city withholding forms.

Payers may wish to use magnetic media to file withholding tax information and reporting information with this Department. This may be done with prior approval. To request permission to file on magnetic media and for further information, write to: New York State Tax Department, Withholding Tax Unit, W.A. Harriman Campus, Albany, New York 12227.

Change of Resident Status

In the case of an individual who has changed residence from resident to nonresident, the withholding reported on Form IT-2102-G will be considered acceptable security in lieu of making a special accrual of lottery winnings as required by Section 638(c) of the Tax Law.