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## Important Notice

Spring 2000

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### **Important Notice to Employers Regarding the Elimination of the New York City Nonresident Earnings Tax for New York State Nonresidents**

As a result of a recent New York State Court of Appeals decision, the City of New York nonresident earnings tax has been eliminated for New York State nonresidents on or after July 1, 1999. Prior to the decision, legislation enacted in 1999 eliminated the tax only for New York State residents. Consequently, the nonresident earnings tax has been completely eliminated and employers have no further withholding obligation with respect to this tax. This notice contains the information that employers will need to:

- stop withholding of the nonresident earnings tax on New York State nonresidents (see paragraph 1 below),
- determine the New York City resident status of employees for withholding tax purposes (see paragraph 2 below),
- report and pay over to the Tax Department any nonresident earnings tax already withheld from New York State nonresidents (see paragraph 3 below), and
- properly prepare federal Forms W-2 or New York State Forms IT-2102 for the year 2000 (see paragraph 4 below).

This notice does not apply to the New York City resident income tax. Employers must continue to withhold the New York City resident income tax on any employee who is a resident of the city.

#### **(1) Stop withholding on New York State nonresidents**

Employers should immediately stop withholding of the New York City nonresident earnings tax on wages paid to New York State nonresident employees.

#### **(2) Determining the New York City resident status of employees**

Employers may use any of the following guidelines to determine if an employee (whether existing or newly hired) is a nonresident of New York City:

- The employee's home address shown on the employer's withholding or other employment or tax records is outside the city of New York.
- The employer has on file for the employee, or the employee submits, Form IT-2104.2, *City of New York Certificate of Nonresidence*. This form has been redesigned to reflect the complete elimination of the nonresident earnings tax. Copies of the new form are enclosed with this notice. However, if you already have on file a copy of an older version of the form for the employee, the employee does not have to complete and submit to you the new version.
- The employer has on file for the employee, or the employee submits, Form IT-2104.1, *New York State Certificate of Nonresidence and Allocation of Withholding Tax*.

- The employee has submitted Form NYC-2104-E, *City of New York Certificate of Exemption from Nonresident Earnings Tax Withholding*. (Note: Form NYC-2104-E was designed in response to the elimination of the New York City nonresident earnings tax for New York State residents only. Since the nonresident earnings tax is now eliminated for all employees, this form is obsolete and the above guidelines should be applied to newly hired employees. However, employers may rely on a previously submitted Form NYC-2104-E until such time as an employee's status changes.)

### **(3) Reporting and paying over to the Tax Department any New York City nonresident earnings tax already withheld**

Employers should report and remit to the Tax Department in the usual manner any New York City nonresident earnings tax actually withheld from their employees. Employers **should not** refund directly to employees any New York City nonresident earnings tax already withheld.

The Tax Department will make available to employees new Form NYC-203-R, *Claim for Refund of New York City Nonresident Earnings Tax Withheld*. Employees may use this form to request an early refund from the Tax Department of nonresident earnings taxes withheld from their wages in 2000. To file this form, employees will need to know the amount of wages on which the employer withheld New York City nonresident earnings tax for the year 2000 and the amount of New York City nonresident earnings tax withheld in 2000. Employees will be required to determine this information from their own records (for example, year-to-date pay stub from the last pay period for which the earnings tax was withheld). Employers will not be required to do any special reporting (such as mid-year wage and tax statements) as part of this refund program. However, it will be very helpful to employees if employers would notify them when withholding will stop so employees can retain their pay stub for that payroll period.

### **(4) Preparation of federal Forms W-2 or New York State Forms IT-2102 for tax year 2000.**

For purposes of reporting the New York City nonresident earnings tax withheld on wage and tax statements issued for the 2000 tax year, the following guidelines apply:

- **If using federal Form W-2**, in box 20, *Local wages, tips, etc.*, do not include wages on which you withheld the New York City nonresident earnings tax. In box 21, *Local income tax*, enter the amount of New York City nonresident earnings tax withheld in 2000.
- **If using New York State Form IT-2102**, report in box 3, *City of New York income tax withheld*, the amount of New York City nonresident earnings tax withheld in 2000.