Yonkers resident tax rate change: see page 27

New York State
Department of
Taxation and Finance

NYS-50
(1/14)

Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax

(Revised January 2014)

This booklet contains information on:

- Employer rights, responsibilities, and filing requirements
- New York State unemployment insurance
- New York State wage reporting
- New York State, New York City, and Yonkers income tax withholding
- Reporting new or rehired employees

New York State Tax Department and New York State Department of Labor (Unemployment Insurance Division) addresses and telephone numbers are also included for further assistance.

For withholding tax tables and methods, see:

- Publication NYS-50-T-NYS, *New York State Withholding Tax Tables and Methods*
- Publication NYS-50-T-NYC, *New York City Withholding Tax Tables and Methods*
- Publication NYS-50-T-Y, *Yonkers Withholding Tax Tables and Methods*

The information presented is current as of the publication's print date. Visit the Web at ***www.tax.ny.gov*** and ***www.labor.ny.gov*** for up-to-date information.

Highlights of changes and other important information

Unemployment Insurance (UI) Reform

Shared Work Program

Effective April 29, 2013, reforms to expand the Shared Work Program took effect. Shared Work allows participating employers to temporarily reduce the work hours of all or a group of employees in lieu of layoffs. The reforms expand the program to more small businesses. Also, most employers' accounts will not be charged for participation in Shared Work through August 2015. For more information, visit the Labor Department's Web site at *www.labor.ny.gov*.

Employers must respond on time

Effective October 1, 2013, employers that fail to respond in a timely or adequate manner to a Notice of Potential Charges or any other request for information concerning the UI claim of a former employee may not be relieved of charges to their account. Please visit the Department of Labor's Web site to access SIDES (State Information Data Exchange System), which helps employers respond to information requests in a timely manner. Also effective October 1, 2013, claimants will be subject to a penalty of 15% or $100.00, whichever is greater, if they fraudulently collect benefits. Revenues from penalties will be deposited into the Trust Fund.

Wage base and rate schedule changes

Effective January 1, 2014, changes will be made to the financing of the Trust Fund. Beginning January 1, 2014, the UI wage base will be $10,300. The wage base will gradually increase each year, reaching 16% of the state's average annual wage in 2027. (See *Annual Wage Base* on page 12.) This will raise revenue more quickly to pay off debt and return the Trust Fund to a healthy level. As the Trust Fund reaches a higher level of solvency, there will be an automatic shift to lower rate schedules, which will lower contribution rates for all employers. These reforms will greatly reduce the likelihood of having to borrow from the federal government and from incurring interest payments, which are passed on to employers in the form of the IAS (Interest Assessment Surcharge).

Additional reforms that take effect January 1, 2014 include:

- All employers who are charged for benefits will be able to protest claims of former employees who have been terminated for misconduct or who voluntarily resigned provided they responded to the Notice of Potential Charges within the time prescribed on the notice. If the protest is upheld, the employer may be relieved of charges for benefits paid.
- Under certain circumstances, claimants may not be eligible for benefits when receiving dismissal/severance pay.
- New measures to prevent and detect unemployment insurance fraud and abuse will be implemented.
- Employees disqualified for benefits for voluntarily quitting a job, misconduct, or refusing to accept suitable employment must earn ten times the previous weekly benefit rate with a new employer, to re-qualify for benefits.
- Extra job search assistance for the unemployed that will help them get back to work more quickly.
- Any employer financed pension, whether financed partially or in full, will result in a reduction of benefits paid to the claimant equal to the weekly equivalent of the pension.

UI benefit rate increase

Effective October 1, 2014, the maximum weekly benefit rate will increase from $405 to $420. The benefit rate will then gradually increase to 50% of the state's average weekly wage by 2026. The minimum weekly benefit rate will also increase from $64 to $100, and will remain at that level.

Misclassification of workers – Unemployment Insurance

Employee misclassification occurs when an employer either (1) fails to report its employees to the state and pays them "off-the-books" or (2) improperly classifies its workers as independent contractors when they meet the legal standards for classification as employees. Misclassifying workers can have a severe impact on workers and employers in industries where the practice prevails. For employers, it creates an unfair economic advantage and imposes higher costs on responsible employers. This makes them less competitive and more likely to be underbid by businesses that intentionally misclassify workers. For workers, it affects working conditions by encouraging unscrupulous employers to ignore labor protections, such as wage and hour requirements and safety and health regulations. We need your help to keep the system fair and equitable for everyone. If you are aware of any employer committing fraud, you may report it anonymously by contacting the Department of Labor, Specialized Services and Liability Unit, by any of these methods:

- Visit our Web site at *www.labor.ny.gov*
- Call 1 866 435-1499 24 hours a day or (518) 485-2144 between 8:00 AM and 4:00 PM
- Fax information to (518) 485-6172
- Report by mail to:

  NEW YORK STATE DEPARTMENT OF LABOR
  SPECIALIZED SERVICES AND LIABILITY UNIT
  BUILDING 12 ROOM 322
  W A HARRIMAN CAMPUS
  ALBANY NY 12240

Online services for employers

The New York State Department of Labor Web site *(www.labor.ny.gov)* Employer Overview page contains several features for employers:

- New employers can register for UI online through Employer Registration.
- Registered employers can access their employer account to obtain their UI rates and other important information regarding their account through Unemployment Insurance Online Services (UIOS).
- Unemployment Insurance Online Services also contains a link to the Department of Taxation and Finance's Web site that allows employers to file their quarterly returns online.

Web File

Employers can now electronically submit Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*, as well as submit payment via ACH debit on the Tax Department's Web site (see *Need help?* on page 45).

Web upload

Employers who are required (or elect) to file wage reporting electronically **must** submit wage reporting files on the Tax Department's Web site. This can be done by uploading the wage reporting information or by entering the wage reporting information, for up to 1000 employees, into the Web NYS-45 (see *Electronic reporting of wage information* on page 25).

For more details on how to register to begin uploading electronic files, visit the Tax Department's Web site (see *Need help?* on page 45).

New employer registration

New employers can register for unemployment insurance, wage reporting, and withholding tax online at *www.labor.ny.gov*, or by calling the New York State Department of Labor or New York State Department of Taxation and Finance at the numbers listed below.

- **Department of Labor**

  Internet access: *www.labor.ny.gov*

  Unemployment insurance registration information:
  (518) 457-4179 or 1 888 899-8810

  Telephone assistance is available from 8:00 AM to 5:00 PM (Eastern Time), Monday through Friday

- **Department of Taxation and Finance**

  Internet access: *www.tax.ny.gov*

  Withholding Tax Information Center: (518) 485-6654

General business and domestic employers may register for unemployment insurance, wage reporting, and withholding tax online at *www.labor.ny.gov* or by completing Form NYS-100, *New York State Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting*. Form NYS-100 can be downloaded from either the Department of Labor's Web site at *www.labor.ny.gov* or the Department of Taxation and Finance's Web site.

You should have a federal employer identification number (EIN) to register your business. You can get your EIN from the Internal Revenue Service (IRS) through the mail, by phone, or online *(www.irs.gov/businesses/small)*. You must first complete federal Form SS-4, *Application for Employer Identification Number*. This form is available from any Social Security Administration office, the IRS, or you can download the form from the IRS Web site *(www.irs.gov)*.

Reporting newly hired employees electronically

All employers must report to the Tax Department certain identifying information about newly hired or rehired employees working in the state, within 20 calendar days of the hiring date. New York State employers may report new hire information electronically through the Tax Department's New Hire Web site at *www.nynewhire.com*.

Reporting requirements for employers

Employers are required to report with their Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (Form NYS-45) if dependent health insurance benefits are available to any employees.

Employers are also required to report if dependent health benefits are available and the date the employee qualifies for coverage when reporting newly hired or rehired employees under the New Hire Reporting Program.

In addition, employers are required to report the hiring date when reporting newly hired or rehired employees to New York State. (See *New Hire reporting requirements* on page 43.)

Metropolitan commuter transportation mobility tax (MCTMT) for employers

Certain employers that have payroll expense within the Metropolitan Commuter Transportation District (MCTD) are liable for the MCTMT for a calendar quarter if they are required to withhold New York State income tax from wages paid to employees and their payroll expense for all covered employees is more than $312,500 for that calendar quarter.

The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

For more information on the MCTMT, see Publication 420, *Guide to the Metropolitan Commuter Transportation Mobility Tax*, or the Department of Taxation and Finance's Web site (see *Need help?* on page 45).

Confidentiality of unemployment insurance information

Section 537 of the New York State Unemployment Insurance Law provides that unemployment insurance information is confidential and cannot be disclosed except under limited circumstances. Unemployment insurance information regarding an employer, including wage reporting information used by the Department of Labor in administering the unemployment insurance program, may be requested and utilized for other governmental purposes. These purposes include, but are not limited to, verification of an individual's eligibility for other government programs.

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1. Labor Department — Unemployment Insurance Program

A. Preface

The New York State Unemployment Insurance Program, administered by the State Labor Department and financed by employers, provides immediate, short-term financial protection for people who are out of work through no fault of their own. This section is designed to provide general information on the program and your role in ensuring that it functions efficiently. Here you will find information on:

- What constitutes employment under the unemployment insurance law
- Who is an employer
- Record-keeping requirements
- Reporting requirements
- Your right to a hearing on unemployment insurance determinations
- How unemployment insurance rates are computed
- Controlling unemployment insurance costs
- Unemployment insurance benefits

Statements in this section are intended for general information and do not cover all provisions of the unemployment insurance law, and do not have the effect of law or regulation. Please refer to the *Need help?* section beginning on page 45 of this booklet for addresses, telephone, and fax numbers to contact for additional information.

Confidentiality of unemployment insurance information

Section 537 of the New York State Unemployment Insurance Law provides that unemployment insurance information is confidential and cannot be disclosed except under limited circumstances. Unemployment insurance information regarding an employer, including wage reporting information used by the Department of Labor in administering the unemployment insurance program, may be requested and utilized for other governmental purposes. These purposes include, but are not limited to, verification of an individual's eligibility for other government programs.

You may review the New York State Unemployment Insurance Law (Article 18 of the New York State Labor Law) at our Web site *(www.labor.ny.gov)*.

B. Employment

The unemployment insurance law defines employment as any service, unless specifically excluded, performed for compensation under a contract of hire, whether the contract is expressed or implied, written or oral, and without regard to whether the service is performed on a part-time, full-time, or casual basis.

Covered employment

Employees may perform services on or off the employer's premises or in their own homes. Homeworkers are considered employees under the State Labor Law.

Officers of all corporations, including professional, subchapter S and other closely held corporations, who perform services for the corporation are employees of that corporation. Their compensation for these services is reportable and subject to contributions. However, members of a Limited Liability Company (LLC), Limited Liability Investment Company (LLIC), or Limited Liability Trust Company (LLTC) are not considered employees and their earnings are not reportable or subject to contributions. Also, earnings of individual proprietors are not reportable or subject to contributions.

Employment specifically covered under the unemployment insurance law includes:

1. Agent or commission drivers engaged in distributing meat, vegetables, fruit or bakery products; beverages (other than milk); laundry or dry cleaning services.
2. Traveling or city salespersons who work full-time soliciting orders for merchandise for resale or use in the purchaser's business operations.
3. Professional musicians or persons otherwise engaged in the performing arts, who perform services as such for a television or radio station or network, a film production, a theater, hotel, restaurant, nightclub or similar establishment unless, by written contract, such musicians or persons are stipulated to be employees of another employer.
4. Professional models who perform modeling services for, or who consent in writing to transfer use of their name or likeness for purposes of advertising or trade to, a person or entity that dictates assignments, hours of work or performance location and that compensates them, in return for a waiver of their privacy rights, unless the services are performed under a written contract that states the model is an employee of another covered employer.
5. Fellow, resident, and intern physicians who perform services for a health care facility, including academic medical centers.

State of jurisdiction

Generally, employees who work entirely within New York are covered under New York's Unemployment Insurance Law, and all of their earnings must be reported to New York. However, in instances where only part of an employee's services are performed in New York, it is necessary to determine the state to which payments for services should be reported. In such instances, certain tests are used to determine if wages paid are reportable to New York State. The tests considered involve (1) location, (2) the employee's base of operations, (3) place of direction and control, and (4) residence. In some cases, an employee may be covered by New York law even if no services are performed in New York, providing that the services are not covered under the law of any other state.

For more information on determining the state to which wages should be reported, please contact the Department of Labor, Liability and Determination section (see *Unemployment insurance issues – Where can I find the answers?* on page 46, or see *Unemployment insurance publications* on page 51 to request pamphlet IA 116.3, *Determining Jurisdiction of Employment When Services are Performed in a Number of States).*

Maritime service

Maritime service on vessels of American registry which operate in more than one jurisdiction, regardless of where the service is performed, is covered employment in New York, provided the vessels are normally managed and controlled from an office in this state.

Noncovered employment

The services of certain workers are not covered under the unemployment insurance law. Their earnings are not subject to contributions, and they do not accrue rights to unemployment benefits. The following is a list of specific exclusions for various types of employers.

Exclusions applicable to all employers

- Independent contractors.
- Students in regular attendance in the educational institution which employs them if their employment is incidental to their course of study.
- Student's spouse employed by student's educational institution if advised at time of hire that the employment is under a program of financial assistance to the student.
- Students enrolled in nonprofit or public educational institutions in certain work-study programs.
- Students enrolled full-time in an educational institution, who are employed at certain camps.
- Sole proprietor, their spouse or child under the age of 21.
- Persons whose employment is subject to the Federal Railroad Unemployment Insurance Act.
- Free-lance shorthand reporters under certain conditions.
- Licensed real estate brokers or sales associates under certain conditions.
- Licensed insurance agents or brokers under certain conditions.
- Persons engaged in recreational bowling.

Exclusions applicable to all employers except nonprofit organizations, governmental entities, and Indian tribes

- Daytime students in elementary or secondary schools. (However, contributions may be required on students' earnings; see *Students* on page 8.)
- Children under the age of 14.
- Babysitters under the age of 18 at the home of the employer.
- Golf caddies.
- Persons under the age of 21 performing casual services consisting of yard work and household chores about a residence.

Exclusions applicable only to nonprofit organizations

- Duly ordained ministers in the exercise of their ministry.
- Members of religious orders in the performance of their duties.
- Lay members elected or appointed to an office within the discipline of a bona fide church and engaged in religious functions.
- Persons employed at a place of religious worship as a caretaker or for the performance of duties of a religious nature.
- Persons receiving rehabilitative services in a facility conducted for such purposes.
- Persons given remunerative work in a facility conducted for the purpose of providing such work for persons of impaired physical or mental capacity.
- Inmates of a custodial or penal institution working for a nonprofit organization.
- Participants in Youth Service Programs under certain conditions.

Exclusions applicable only to governmental entities and Indian tribes

- Elected officials.
- Members of legislative bodies or the judiciary.
- Individuals hired on a temporary basis in case of fire, snow, earthquake, flood, or similar emergency.
- Inmates of custodial or penal institutions.
- Officials in major nontenured, policy-making, or advisory positions.
- Individuals in policy making or advisory positions whose official duties do not require more than 8 hours a week to perform.
- Members of the State National Guard or Air National Guard, except a person who renders such services as a regular state employee.

Independent contractors

Independent contractors are excluded from unemployment insurance coverage. These are persons who are actually in business for themselves and hold themselves available to the general public to perform services.

While the statute does not define an independent contractor, unemployment insurance case law has held that common law tests of master and servant must be applied in making a determination of whether services rendered by an individual are in the capacity of an employee or an independent contractor. Under these tests, all factors concerning the relationship between the two parties must be taken into consideration to determine if the party contracting for the services exercises, or has the right to exercise, supervision, direction, or control over the party performing the services. If the circumstances demonstrate either the exercise of, or the right to exercise, such supervision, direction, and control, it must be held that the services rendered are employment.

Since matters concerning the status of persons as employees or independent contractors are often complex, it is recommended that employers write to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46) furnishing complete details of the relationship with the person engaged to render services and request a determination of their status. Failure to report and pay the contributions due on the earnings of persons on the assumption that they are independent contractors may result in additional assessments and interest if their services are later determined to be employment.

Further information is available in our pamphlet, *Independent Contractors,* IA 318.14.

New York State Construction Industry Fair Play Act

The New York State Construction Industry Fair Play Act (Chapter 418 of the Laws of 2010) became effective on October 26, 2010. This law created a new standard for determining whether a worker is an employee or independent contractor in the construction industry and provides penalties for employers who fail to properly classify their employees.

Standard: Individuals working for an employer in the construction industry will be presumed to be employees unless they meet all three criteria below. The individual must be:

(1) free from control and direction in performing the job, both under contract and in fact;

(2) performing services outside of the usual course of business for the company; and

(3) engaged in an independently established trade, occupation, or business that is similar to the service they perform.

Separate business entity: The law also contains a twelve-part test for determining when a sole proprietor, partnership, corporation, or other entity will be considered a *separate business entity* from the contractor for whom it is providing a service. If an entity meets all of the 12 criteria, it will not be considered an employee of the contractor but will instead be a separate business that is itself subject to the law regarding its own employees.

Agencies covered: The standard for determining employment applies to determinations under the Labor Law (including labor standards, prevailing wage law, and unemployment insurance) and the Workers' Compensation Law. The penalties provided by the law apply to determinations of misclassification under the Labor Law, Workers' Compensation Law, and the New York State Tax Law.

Penalties: An employer that willfully violates the Fair Play Act by failing to properly classify its employees will be subject to civil penalties of up to a $2,500 fine per misclassified employee for a first violation and up to $5,000 per misclassified employee for a second violation within a five-year period.

Employers may also be subject to criminal prosecution (a misdemeanor) for violations of the Fair Play Act, with a penalty of up to 30 days in jail, up to a $25,000 fine, and debarment from Public Work for up to one year for a first offense. Subsequent misdemeanor offenses would be punishable by up to 60 days in jail, up to a $50,000 fine, and debarment from performing Public Work for up to five years.

Posting: Construction industry employers must post a notice about the Fair Play Act in a prominent and accessible place on the job site. Failure to post the notice can result in penalties of up to $1,500 for a first offense and up to $5,000 for a second offense. A poster may be downloaded at *www.labor.ny.gov* or can be ordered by calling (518) 485-8589.

Contact us: If you have any questions concerning the Fair Play Act or if you wish to report suspected worker misclassification, please contact the State Labor Department at 1 866 435-1499 or *dol.misclassified@labor.ny.gov*. The full text of the Fair Play Act is posted on the Department of Labor Web site at *www.labor.ny.gov*.

Students

Daytime students in elementary and secondary schools who perform services for employers other than nonprofit organizations, governmental entities, and Indian tribes are not covered for unemployment insurance, even if they work only during summer or other vacation periods or on weekends. However, their earnings are subject to contributions if the employer is subject to the Federal Unemployment Tax Act (FUTA). Such students who perform services for certain camps (see the chart on page 10), including those operated by nonprofit organizations, governmental entities, and Indian tribes are not covered and their earnings are not subject to contributions.

Services performed by college students are generally covered. Exceptions are noted in the list of exclusions, beginning on page 6. Also see the chart on page 10.

Covered and excluded employment

The following chart may be used as a guide in determining whether a specific type of employment is subject to contributions under the unemployment insurance law. Questions concerning coverage of particular services should be directed to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

Class of employment	Treatment under UI law
Agricultural laborers	Covered
Non-U.S. residents (referred to in federal and state law as “aliens”)	Covered if services are performed by a non-U.S. resident lawfully present in the United States for the purpose of performing such work or lawfully admitted for permanent residence in the United States. Although undocumented non-U.S. residents may not collect benefits, any remuneration paid to them is subject to contributions.
Baby-sitters under age 18	Excluded unless performed for nonprofit organizations, governmental agencies, or Indian tribes
Casual laborers	Covered
Casual laborers under age 21	When services consist of yard work and household chores in and about a residence, and do not involve the use of power-driven machinery: 1. Covered if performed for nonprofit organizations, governmental entities, or Indian tribes 2. Excluded if performed for employers other than nonprofit organizations, governmental entities, and Indian tribes
Children under age 14	1. Covered if performed for nonprofit organizations, governmental entities, or Indian tribes 2. Excluded if performed for employers other than nonprofit organizations, governmental entities, and Indian tribes
Corporate officers	Officers of all corporations, including professional, subchapter S, and closely-held corporations, who perform services for the corporation, are employees. Any compensation for these services, including dividends and distributions, is reportable and subject to contributions.
Domestic employment	Personal or domestic services performed in the home are covered employment.
Drivers — agent or commission	Covered when engaged in distributing meat, vegetables, fruit or bakery products; beverages (other than milk); laundry or dry cleaning services
Family employment Minor children, under 21, of a sole proprietor Spouse of sole proprietor Child/spouse of partner Any family member employed by corporation	 Excluded (includes stepchildren) Excluded Covered Covered
Employment outside NYS	Generally, services performed entirely outside NYS are excluded. However, if such services are not covered under the laws of any other state, they are covered under NYS law if performed: (1) outside the United States (except Canada and the Virgin Islands) by a citizen of the US for an American employer whose principal place of business is located in NYS; or (2) within the United States, Canada, or the Virgin Islands, if the place from which the services are directed and controlled is in New York State. If none of these conditions apply, and the services are performed by a NYS resident, an employer may elect to voluntarily cover the services.
Golf caddies	Excluded unless performed for nonprofit organizations, governmental entities, or Indian tribes
Government and Indian tribe employees	Covered except for the following services: • elected officials • members of legislative bodies or the judiciary • members of the NYS National Guard or Air National Guard, except a person who renders such services as a regular state employee • individuals hired on a temporary basis in case of fire, snow, earthquake, flood or similar emergency • inmates of custodial or penal institutions • officials in major, nontenured policy making or advisory positions • individuals in policy making or advisory positions whose official duties do not require more than 8 hours per week to perform
Independent contractors	Excluded
Individual proprietor	Excluded
Industrial homeworkers	Covered

Covered and excluded employment *(continued)*

Class of employment	Treatment under UI law
Inmates of a custodial or penal institution	Excluded if performed for nonprofit organizations, governmental entities, or Indian tribes
Joint employment (Common Paymaster)	If a person is jointly employed by two or more employers that are financially related, contributions on the total earnings of that person are required from these employers only on the amount up to the annual wage base as if they were a single employer. See chart on page 12, under *Annual wage base*. If two or more financially related corporations concurrently employ the same individual(s) and pay such concurrently employed individual(s) through a common paymaster, which is one of such corporations, the common paymaster may report and pay UI contributions under its own account up to the annual wage base amount on the remuneration paid to each concurrently employed individual. However, if reporting by the common paymaster has not been approved for FUTA purposes, then each of the employers must report its share of the wages paid to the concurrent employee(s), but pay contributions only on the wages up to the annual wage base amount in the aggregate. Contact the Tax Department and Labor Department for information on filing as a common paymaster. (See *Common paymaster* on page 12 for mailing addresses.)
Limited Liability Company members	Excluded
Maritime employment	Covered. If a vessel operates in more than one jurisdiction: covered in New York State, provided the services are performed on vessels of American registry which are normally managed and controlled from an office in New York State.
Ministers, ordained	Excluded for nonprofit organizations. Also excluded for nonprofit organizations are members of religious orders in the performance of their duties, members elected or appointed to an office within the discipline of a bona fide church and engaged in religious functions, and persons employed at a place of religious worship as a caretaker or for performance of duties of a religious nature.
Models	Covered*
Musicians	Covered*
Partners (including Limited Liability Partnership)	Earnings are not subject to contributions under UI law and services cannot be covered on a voluntary basis
Part-time employment	Covered, unless specifically excluded *
Performing artists	Covered*
Physicians - fellow, resident, and intern	Fellow, resident, and intern physicians are covered when performing services for a health care facility, including academic medical centers.
Railroad Unemployment Insurance Act, employees subject to	Excluded
Recreational bowlers	Excluded
Rehabilitative services, persons receiving	Excluded for nonprofit organizations, for persons receiving rehabilitative services in a facility conducted for such purposes
Remunerative work, persons given	Excluded for nonprofit organizations for persons given remunerative work in a facility conducted for the purpose of providing such work for persons of impaired physical or mental capacity
Salespersons, traveling or city	Traveling or city salespersons who work full time soliciting orders for merchandise for resale or use in the purchaser's business are covered, if substantially all of such work is to be personally performed and the person performing it has no substantial investment in the facilities used in performance of such services except the facilities for transportation.
Licensed insurance agents or brokers	Excluded if substantially all of the remuneration for the services performed is directly related to sales or other output, rather than to the number of hours worked, and the services are performed pursuant to a written contract containing certain provisions.
Licensed real estate brokers or sales associates	Excluded if substantially all of the remuneration for the services performed is directly related to sales or other output, rather than to the number of hours worked, and the services are performed pursuant to a written contract containing certain provisions.
Seasonal employment	Covered unless specifically excluded*
Shared employment	Under certain circumstances, employers who are not financially related, but share the services of a single employee, are not required to report and pay the contributions on their own share of the employee's earnings. Whenever one of the employers takes the responsibility of hiring, firing, supervising, directing and controlling the shared employee, that employer will be allowed to report the employee for UI contribution purposes; therefore, separate reporting by each employer will not be required. Only in instances where employers have received a ruling that they must report separately for FUTA, will it be necessary to require separate reporting.

***** See *Covered employment,* page 6, for services specifically covered by law. Recent appeal board and court decisions have determined that models, musicians, and performing artists may be independent contractors under certain circumstances. For further information, contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46).

Covered and excluded employment *(continued)*

Class of employment	Treatment under UI law
Students	
College and other students in school beyond high school	Covered unless specifically excluded*
Elementary and high school students	1. Covered only if employed by nonprofit organizations, governmental entities, or Indian tribes 2. Excluded when in regular daytime attendance and employed by other than nonprofit organizations, governmental entities, and Indian tribes. However, if the employer is subject under FUTA, these earnings must be reported either quarterly or annually.
Students in regular attendance in the educational institution which employs them or their spouses	Excluded. The spouse's employment is excluded if advised at the time of hire that the employment is under a program of financial assistance to the student and will not be covered for unemployment insurance purposes.
Students enrolled in nonprofit or public educational institutions in certain work-study programs which combine academic instruction with work experience	Excluded
Students employed at a camp while enrolled full-time at a secondary or higher educational institution or, if between academic years or terms, there is a reasonable assurance that the student will be enrolled in the succeeding academic year or term	Excluded if services performed for a camp as defined in section 1392 of the Public Health Law if: 1. The camp does not operate for more than 7 months during a year and the preceding year, or, must have average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3% of its average gross receipts for the other 6 months of that year 2. The student works less than 13 weeks in a year
Temporary employment	Covered unless specifically excluded *
Youth services program participants	Excluded for nonprofit organizations under certain conditions

***** See *Covered employment,* page 6, for services specifically covered by law. Recent appeal board and court decisions have determined that models, musicians, and performing artists may be independent contractors under certain circumstances. For further information, contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46).

C. Who is an employer?

Employer types

An employer is an individual owner, a partnership, a corporation, a Limited Liability Company, or any other enterprise for whom employees perform services. Other than general business employers, the various types of employer entities are:

Nonprofit employers — A nonprofit organization is one that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. Generally, this includes organizations that qualify for exemption under section 501(c)(3) of the Internal Revenue Code (IRC).

Governmental employers — Governmental entities are defined by law as "the State of New York, municipal corporations, and other governmental subdivisions, and any instrumentality of one or more of the foregoing."

Indian tribes — An Indian tribe is defined by law as any Indian tribe, subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe as defined in section 3306(u) of FUTA. This applies to federally recognized Indian tribes.

Household employers — are those who employ persons in personal or domestic service in their home or homes within New York State. The *Householder's Guide for Unemployment Insurance,* IA 318D, is available upon request from the Department of Labor, Registration Subsection (see *Unemployment insurance issues—Where can I find the answers?* on page 46).

Agricultural employers — Agricultural employers are those who employ persons who perform services:

1. On a farm** in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

   **As used in defining agricultural employment, the term *farm* includes stock, dairy, poultry, fur-bearing animal, fruit, and truck farms; plantations; nurseries; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.
2. In the employ of the owner, tenant, or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm, its tools, and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
3. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (a) as an incident to farming operations; or (b) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not apply to service performed in connection with commercial canning, commercial freezing, or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Employers who have questions regarding whether specific kinds of services constitute agricultural labor should contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46). Further information is also available in pamphlet IA 318.11, *Agricultural Employment*.

Liable employers

An employer who begins hiring employees in New York State is required to notify the Department of Labor, Unemployment Insurance Division promptly so that the appropriate UI liability status can be determined.

The conditions for liability under the unemployment insurance law differ among nonprofit, governmental, Indian tribes, household, agricultural and all other employers. The chart below illustrates those conditions.

Conditions for liability

Type of employer	New York State unemployment insurance law	Federal Unemployment Tax Act (FUTA)
Agricultural employers	Liable (1) as of the first day of the calendar quarter in which they pay cash remuneration of $20,000 or more to persons in agricultural labor; (2) as of the first day of the calendar year in which they employ 10 or more persons in agricultural labor on at least one day in each of 20 different weeks during that year or the preceding calendar year; or (3) as of the first day of the calendar quarter in which they pay any remuneration in this state to persons in agricultural labor if the employer is liable under Federal Unemployment Insurance Tax Act (FUTA), with respect to agricultural labor.	Liable for any calendar year in which they (1) pay cash remuneration of $20,000 or more in any calendar quarter of that year or the preceding year to persons in agricultural labor; or (2) employ 10 or more persons in agricultural labor on at least one day in each of 20 different weeks during that year or the preceding calendar year.
Employers of domestic or household workers	Liable as of the first day of the calendar quarter in which they pay cash remuneration totaling $500 or more to persons employed in personal or domestic service in the employer's home or homes within the state.	Liable for any calendar year in which they pay cash remuneration of $1,000 or more in any quarter during that year or the preceding calendar year.
Governmental entities	Liable as of the first day of the calendar quarter in which they pay remuneration to persons in covered employment.	Not liable
Indian tribes	Liable as of the first day of the calendar quarter in which they pay remuneration to persons in covered employment.	Not liable unless a tribe fails to make required payments to the state.
Nonprofit organizations	Liable (1) as of the first day of the calendar quarter in which they pay cash remuneration totaling $1,000 or more; or (2) as of the first day of the calendar year in which they employ four or more persons on at least one day in each of 20 different weeks during that year or the preceding calendar year.	Not liable
All other employers	Liable (1) as of the first day of the calendar quarter in which the employer pays remuneration totaling $300 or more; or (2) as of the day the employer purchases the business of, or otherwise becomes successor to, a liable employer.	Liable for any calendar year in which they (1) pay wages of $1,500 or more during any calendar quarter in that year or the preceding year; or (2) employ at least one person on at least one day in each of 20 different weeks during the calendar year or the preceding calendar year.

Voluntary coverage

Employers who are not liable under the law because they do not pay the required amount of remuneration or employ the required number of persons may elect voluntary coverage for their employees in New York State.

Employers who elect voluntary coverage must cover all their employees whose services are in covered employment. Employees whose services are excluded from covered employment cannot be covered even on a voluntary basis (see *Noncovered employment,* beginning on page 6).

However, regardless of whether they are liable under the law, nonprofit employers may elect to cover either persons excluded from coverage because they work at a place of religious worship as caretakers or those performing duties of a religious nature, or both. Nonprofit employers who are not liable may limit their election to such persons.

An employer who elects voluntary coverage may do so as of the first day of any calendar quarter by applying in writing not later than the last day of such calendar quarter. A written request for voluntary coverage should be sent to the Department of Labor, Liability and Determination Section. Such coverage extends for at least the remainder of that year and the following year. At the end of this period an employer may terminate voluntary coverage by writing to the Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46). Coverage will end as of the close of the quarter in which the written request is received.

Termination of liability

Employers who no longer have employees and do not expect to hire any must write to the Department of Labor, Liability and Determination Section to have their account closed.

An employer's liability will also be terminated the first day of the calendar quarter following the calendar quarter in which a written request is sent to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46), providing the following conditions are met:

General business employers — They have paid remuneration of less than $300 in each of the four consecutive calendar quarters preceding the day on which liability is to terminate.

Nonprofit employers — They have (1) paid cash remuneration of less than $1,000 in each of the four consecutive calendar quarters preceding the day on which liability is to terminate; and (2) not employed four or more persons on at least one day in each of 20 different weeks during that calendar year or the preceding calendar year.

Agricultural employers — They (1) have paid cash remuneration of less than $20,000 to agricultural employees in each of the eight consecutive calendar quarters preceding the day on which liability is to terminate; (2) have not employed 10 or more persons in agricultural labor on at least one day in each of 20 different weeks during the current or preceding calendar year; and (3) are not liable under FUTA as agricultural employers.

Household employers — They have paid cash remuneration totaling less than $500 in each of the four consecutive calendar quarters preceding the day on which liability is to terminate.

D. Rights and responsibilities of a liable employer

Employer registration number

Each liable employer is assigned an eight-digit employer registration number that identifies the employer with the Unemployment Insurance Division. Employers should use their registration number on all correspondence, forms, and remittances submitted to the Unemployment Insurance Division. This registration number is in addition to the federal employer identification number (FEIN).

Display of poster

Upon registration, employers (except household employers) will receive a poster, *Notice to Employees,* IA 133, which informs their workers that their jobs are protected by unemployment insurance. It must be posted where it may easily be seen by employees. Additional copies may be obtained by contacting the nearest Unemployment Insurance Employer Services Office or the Department of Labor, Registration Subsection (see *Unemployment insurance issues—Where can I find the answers?* on page 46).

Record-keeping requirements

All employers must maintain records for each person they employ. The records must show:

1. The employee's name and social security account number; and
2. For each payroll period:
   - the beginning and ending dates;
   - the days the employee worked and the earnings for each day;
   - all other payments made to the employee, including vacation pay, bonuses, dismissal pay, tips, the reasonable value of board and lodging, and other forms of compensation.

Records must be retained for the current year and at least three preceding years and be available for inspection by the Department of Labor.

Reporting requirements

Liable employers are required to report their payroll and pay unemployment insurance contributions each calendar quarter, using Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return,* and Form NYS-45-ATT, *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return - Attachment*, if applicable. This is true whether or not wages are subject to withholding of tax or payment of tax under the Personal Income Tax Law. **Reporting forms must be filed even if the employer had no payroll in the quarter** (see *Seasonal employers,* below, for exception). Any late payments of UI contributions result in interest assessments and may also increase an employer's UI rate in future years (see *Consequences of late or inaccurate reporting,* on page 13).

Quarterly filing due dates

Calendar quarter	Due date
January-February-March	April 30
April-May-June	July 31
July-August-September	October 31
October-November-December	January 31

Note: When the due date falls on a Saturday, Sunday, or legal holiday (see page 37), you are permitted to file on the next business day.

Checks in payment of contributions and taxes due should be made payable in U.S. funds to ***NYS Employment Contributions and Taxes***. Entering the withholding identification number on the remittance will ensure proper credit of payment.

If you need forms, see *Unemployment insurance issues — Where can I find the answers?* on page 46.

Seasonal employers

If, due to the seasonal nature of your business, there is at least one quarter of the calendar year in which you do not make any wage payments subject to both income tax withholding and unemployment insurance contributions, you are eligible for seasonal employer status. To obtain seasonal employer status, you must file a Form NYS-45 with the seasonal employer box marked. Thereafter, you are **not** required to file Form NYS-45 for subsequent quarters during the year in which you paid no wages subject to unemployment insurance and withholding. However, you must mark the seasonal employer box on every return you are required to file, or you will lose your seasonal employer status and be subject to penalties for not filing a return for a subsequent quarter in the same calendar year.

Combined reporting

Common paymaster

New York State does not have the equivalent filing status that the IRS allows as a common paymaster. However, the Tax Department and Labor Department may accommodate employers who have common paymaster status with the IRS for withholding tax, wage reporting, and unemployment insurance (see *Joint employment (Common Paymaster)* in the chart on page 9 and *Annual wage base* below).

The common paymaster is responsible for filing information and tax returns and issuing Form(s) W-2 for wages paid by the common paymaster. If you file as a common paymaster for federal employment tax purposes, you must contact the Tax Department and the Labor Department for information on filing as a common paymaster for New York State withholding tax, wage reporting, and unemployment insurance purposes.

Send written requests to file as a common paymaster to both of the following addresses:

NYS TAX DEPARTMENT
ACCOUNT SERVICES
W A HARRIMAN CAMPUS
ALBANY NY 12227

NYS DEPARTMENT OF LABOR
LIABILITY & DETERMINATION SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12240-0322

The requests should be on company letterhead and should include the common paymaster FEIN and current address, as well as the FEIN for all employers filing under the common paymaster FEIN.

Annual wage base

Unemployment insurance contributions are required on remuneration paid to each employee in a calendar year up to the annual wage base amount.

UI wage base			
The wage base amount for UI contributions will be adjusted effective January 1st of each year as follows:			
Year	UI wage base	Year	UI wage base
2013 and prior	$ 8,500	2020	$ 11,600
2014	10,300	2021	11,800
2015	10,500	2022	12,000
2016	10,700	2023	12,300
2017	10,900	2024	12,500
2018	11,100	2025	12,800
2019	11,400	2026	13,000

After 2026, the wage base will permanently adjust January 1 of each year to 16% of the state average annual wage, rounded up to the nearest $100. The state annual wage is established no later than May 31 of each year. The annual average wage cannot be reduced from the prior year's level.

Remuneration includes every form of compensation paid to covered employees including salary, cash wages, commissions, bonuses, tips, vacation pay, the reasonable value of meals, rent and lodging, and other types of noncash compensation.

In determining the amount of wages subject to contribution in a calendar year for each employee, an employer who has acquired all, or part, of another employer's business may consider the wages paid by the former employer. Also, in determining the amount of wages subject to contribution in a calendar year for each employee, wages paid and reported to another state may be considered. This usually pertains to an employee who is transferred into New York State.

Employers who share the services of a single employee are required to report and pay the contributions on their shares of the employee's earnings. Each is liable for contributions up to the annual wage base. However, if a person is jointly employed by two or more employers that are financially related, contributions on the total earnings of that person are required from these employers only on the amount up to the annual wage base as if they were a single employer.

If two or more financially related corporations concurrently employ the same individual(s) and pay such concurrently employed individual(s) through a common paymaster, which is one of such corporations, the common paymaster may report and pay UI contributions under its own account on the wages paid to each concurrently employed individual up to the annual wage base amount. However, if reporting by the common paymaster has not been approved for FUTA purposes, then each of the employers must report its share of the wages paid to the concurrent employee(s), but pay contributions only on the amount up to the annual wage base amount in the aggregate.

Reporting tips and meals

Tips employees receive in connection with services performed are subject to contributions and must be reported. Employers are required to advise their employees that they have the right to certify to the amount of tips they receive. A certification is a signed and dated statement furnished by the employee to the employer not less than once each calendar quarter indicating the amount of tips received.

The reasonable cash value of board, rent, housing or lodging is subject to contributions and must be reported. An employer may not report a lower cash value for meals and lodging than the value placed on them in complying with minimum wage orders.

Further information is available in our pamphlet, *Reporting Meals, Lodging, Tips and Other Forms of Remuneration,* IA 318.15.

Payments to employees not reportable

Remuneration does not include the following, which are not subject to contributions and should not be reported:

1. Payments made by a sole proprietorship to the sole proprietor, to his or her spouse or minor (under age 21) child, and payments made by a partnership to the partners.
2. Any payment made under a plan or system providing for retirement, sickness, or accident disability, or medical or hospital expenses for an employee or an employee's dependents, including amounts paid for insurance, annuities, or into a fund to provide for the payments (see *Annual reports* below for exceptions).
3. Payments made by an employer, without payroll deductions, of taxes required from employees under the Social Security Act.
4. Insurance or annuity payments to an employee for retirement.
5. Payments made to an employee on account of sickness or accident disability after six complete calendar months following the month in which the employee last worked.
6. Payments from or to a trust described in IRC section 401(a) that is exempt from tax under IRC section 501(a).
7. Payments made to an employee, except vacation or sick pay, beginning with the month following the 65th birthday, for any period in which the employee did not actually work.
8. Dismissal payments (see *Annual reports* below for exceptions).
9. Compensation paid to daytime students in elementary and secondary schools who work for **other** than nonprofit organizations or governmental or Indian tribal entities. This includes payments for working during vacation periods and holidays (see *Annual reports* below for exceptions).
10. For household employers: payments to babysitters under 18 years of age.
11. Payments by certain organized camps for services of a student who is enrolled full time in an educational institution.

Annual reports

Due to the provisions of FUTA, special rules apply to certain types of payments. All employers other than nonprofit organizations, governmental entities, and Indian tribes must report and pay contributions on the following payments if they are liable under FUTA: (1) compensation paid to daytime elementary and secondary school students, unless the students work for certain camps (see chart on page 10), (2) dismissal or severance pay, (3) the first six months of sick pay including disability payments (note: occupationally related workers' compensation payments are not considered sick pay), and (4) reimbursed moving expenses.

These payments to employees may be reported by employers, other than nonprofit organizations, governmental agencies, and Indian tribes and unemployment contributions based on them may be paid, either quarterly on Form NYS-45, Part A, or annually on Form IA7 or IA7A, *Annual Supplementary Contributions Report*. Form IA7 is used by employers with a UI rate (normal plus subsidiary) of 5.4% or less and Form IA7A is used by employers with a UI rate of more than 5.4%. **The rate controlling which form to use may be affected by any reduction as described below.** Annual reporting may result in savings for certain employers. Annual reports, available from the Department of Labor, Employer Account Adjustment Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46), are due on or before January 31 for wages paid during the prior calendar year. To satisfy wage reporting requirements (Part C of Form NYS-45 or Form NYS-45-ATT), employers must always include these payments on quarterly returns as provided in *Gross wages for purposes of wage reporting* on page 25, regardless of whether the employer reports and pays unemployment insurance contributions on these payments quarterly or annually.

It should be noted that if any state has borrowed federal funds in order to pay its benefits, the amount of the allowable credit may be subject to reduction. Federal Form 940 will indicate if New York is a credit reduction state. Information regarding any reduction in the allowable credit is also available on our Web site at *www.labor.ny.gov*.

Although nonprofit organizations, governmental agencies, and Indian tribes are not subject to Federal Unemployment, they are required to pay the state contributions quarterly on all student earnings, unless the organization or agency operates a certain type of camp (see the chart on page 10). However, these employers are not required to report dismissal payments (severance pay) or sick pay.

Payments for services performed by college students are generally subject to contribution quarterly whether or not the employer is subject to FUTA. In certain situations, work performed by college students is not covered employment and their earnings are not subject to contribution (see the chart on page 10).

If you aren't sure whether specific payments to employees are subject to contribution, contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

Enforcement

Audit and investigation — The Department of Labor conducts audits of employers as authorized by section 575 of the Unemployment Insurance Law. Audits ensure compliance and accuracy in coverage of workers, reporting of wages, and payment of contributions due. These activities help to keep UI rates low and provide for fair and equitable treatment of all employers. Questions regarding audits and investigations should be referred to your local unemployment insurance employer services office (see page 48).

Consequences of late or inaccurate reporting — It is important to file a return for each quarter, even if there is no payroll in a particular quarter, to avoid penalties and to ensure that the most accurate UI rate is assigned. (See *Seasonal employers* on page 12 for an exception.) Contributions paid more than 60 days after their due date are not credited to the employer's experience rating account. As a result, they are not considered in the computation of the employer's UI rate. This means that an employer is likely to be assigned a UI rate that is higher than if the contributions were paid on time. Also, failure to file a return may result in a penalty (see *Summary of penalties* on page 35).

Employers who do not pay unemployment insurance contributions when due are charged interest at the rate of 12% per year on the unpaid balance. Interest is assessed from the date payment was originally due and may not be waived or reduced.

If an employer fails to file a required return or files an inaccurate return, and then fails to comply with a written request for a corrected or sufficient return (within 30 days of the request), the Commissioner of Labor will estimate the amount of the contributions due and wages paid based on available information. The estimated wages will be used in the calculation of future unemployment insurance rates and may adversely impact the rate. Failure to file all quarterly returns completely and accurately may result in the assessment of additional penalties (see *Summary of penalties* on page 35).

Collection of overdue contributions — The Department of Labor takes its duty to collect delinquent contributions seriously. There are

substantial penalties and severe restrictions that the Department may impose in meeting this charge. Department employees are available to work with employers and assist them in meeting their obligations. Due to changes in business conditions, the economy, or for personal reasons, businesses may find themselves in arrears on contributions due. The Department of Labor is willing to work with employers in difficult times. A Department of Labor representative can assist an employer with various payment options. It is necessary for employers to communicate problems to the Department to avoid possible action that could restrict business operations and increase debt. Employers facing temporary difficulty in meeting their obligations should call 1 800 456-1015 (also see *Need help?* starting on page 45) for assistance.

If an employer ignores its obligations and defaults on payment of any amount determined due under the unemployment insurance law, the Department of Labor is authorized to file a warrant in the office of your local county clerk to secure payment of the amount due. When filed, a warrant becomes a judgment and a lien against all real property in the county where filed or transcribed. The warrant becomes a matter of public record and may seriously affect the employer's credit rating. Once a warrant is filed, the Department may proceed with active collection. Active collection may involve: seizure of the employer's bank accounts, property, inventory, accounts receivable, and/or any other asset. The Department may also refer the employer's account to the NYS Tax Department for seizure of any tax refunds or contract payments due the employer. Employers may also lose certain tax credits and licenses for failure to comply with the law.

Indian tribes who fail to make all required payments lose the right to elect the *benefit reimbursement option* (below) and become liable under FUTA. Failure to pay required contributions could result in termination of coverage and the employees of the tribe not being covered for unemployment insurance.

Additional assessment for fraud

If an employer's failure to comply with unemployment insurance reporting requirements is determined to be due to fraud with the intent to avoid payment, a penalty of 50% of the total amount of the deficiency may be assessed and collected in the same manner as if it were additional contributions due. Criminal penalties may also be imposed.

Re-employment service fund

In accordance with the unemployment insurance law, a special re-employment service fund has been established to assist unemployment insurance claimants in finding work. The fund is used to provide unemployed workers with such services as job placement, resume preparation, and workshops to match job seekers with jobs. Liable employers, excluding nonprofit, governmental, and Indian tribe employers who have elected the benefit reimbursement option (see *Benefit reimbursement option* below), are required to pay a re-employment service fund contribution of 0.075% (.00075) on their wages subject to contributions in addition to regular unemployment insurance contributions. Employers must report and pay re-employment service fund contributions due on Form NYS-45. Re-employment service fund contributions cannot be used as a credit against amounts due on Federal Form 940, nor will they be used in the computation of the employer's UI rate.

Interest assessment surcharge

Under slow economic conditions, New York, as well as many other states, may borrow money from the federal government in order to meet unemployment insurance (UI) benefit obligations. At times, the revenues from the quarterly UI contributions paid by employers to New York State are insufficient to repay the federal loan in time to avoid interest charges (interest due to the federal government is due annually by September 30). To address this situation and to protect employers and New York State's UI program from possible negative consequences, legislation has been enacted to provide sufficient funds to pay interest to the federal government when it is owed.

The Commissioner of Labor is required to levy an *interest assessment surcharge* on unemployment insurance wages subject to contribution at an annual rate sufficient to produce revenues needed to pay interest due on federal loans. This rate, to be computed annually, is to be applied to wages subject to contribution paid in the most recently completed payroll year (October - September) as of the computation date (December 31). When it is determined that interest will not be due and the assessment is no longer necessary, any amounts remaining will be credited to employers' accounts on a proportional basis for experience rating purposes.

Annual notices are sent informing employers of their *interest assessment surcharge* amount due. If you have any questions regarding this surcharge, please call 1 888 899-8810.

Deductions from an employee's pay

The law expressly prohibits an employer from making a deduction from the earnings of an employee to pay any portion of the unemployment insurance contributions. An employer violating this prohibition is guilty of a misdemeanor.

Refunds and credits

If an employer reports wages and pays unemployment insurance contributions to a state other than New York and later finds that the contributions should have been paid to New York, correcting adjustments may be made. Conversely, similar adjustments may be made when contributions are reported to New York in error. An employer should contact the Department of Labor, Liability and Determination Section to request corrections (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

Refund or credit for overpayment of unemployment insurance contributions or for interest or penalty erroneously paid may be obtained on application if made on or before the later of the following dates: one year after the payment was made, or three years and one month after the calendar quarter during which remuneration was paid that formed the basis for the contributions, interest, or penalty assessment erroneously made.

Benefit reimbursement option

Rather than paying the quarterly contributions on their payrolls, nonprofit organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (those exempt under section 501(c)(3) of the IRC), governmental entities, and Indian tribes have the option of reimbursing benefits paid to their former employees and charged to their accounts.

A request to elect the reimbursement option must be submitted in writing to the Department of Labor before the beginning of the calendar year in which it is to apply or within 30 days after the calendar quarter in which the nonprofit organization, governmental entity, or Indian tribe became liable under the unemployment insurance law. The request must be in writing and sent to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46). Indian tribes requesting the reimbursement option will be required to post a surety bond if their request is approved. Failure to submit a timely request can only be excused if an employer can show good cause for the delay.

Following the end of each calendar quarter, a nonprofit organization, governmental entity, or Indian tribe that has elected this benefit reimbursement option is billed for the total benefits charged. They are also required to complete Form NYS-45 and Form NYS-45-ATT, if applicable, to include: number of employees; total remuneration (Part A line 1); Parts B and C; and signature.

Employers electing the benefit reimbursement option are not required to contribute to the re-employment service fund.

For more details about the benefit reimbursement option, see pamphlet IA 318.13, *Benefit Reimbursement,* or if an Indian tribe, see pamphlet IA 318 IT, *Unemployment Insurance Coverage for Indian Tribes*.

The relationship of New York State and federal unemployment insurance reporting

The annual total New York State wages reportable for FUTA purposes on Form 940 should be reconciled to the wages subject to contribution reported to the Unemployment Insurance Division for the year on Form NYS-45 (the total of wages reported each quarter on line 3 of Form NYS-45). Employers should take time to review these figures and resolve any discrepancies before submitting the federal reports that are due January 31 each year. This will help ensure that proper credit is applied to the FUTA amount due and may prevent future questions resulting from any apparent discrepancy between the amount of wages subject to contribution reported to each agency for the year.

An employer subject to FUTA will obtain a 5.4% credit against the federal amount due if the state contributions are paid in full by January 31 following the close of the reporting year. If the state contributions are paid after January 31, the credit is limited to 90% of the amount which would have been allowable as a credit had the state contributions been paid on time. Moreover, unless the state contributions are paid, no credit may be taken against the federal amount due on Form 940.

It should be noted that if any state has borrowed federal funds in order to pay its benefits, the amount of the allowable credit may be subject to reduction. Federal Form 940 will indicate if New York is a credit reduction state.

Note: Re-employment service fund amounts paid may not be used to claim a credit against federal unemployment amounts due.

Maintaining accurate business information

The Unemployment Insurance Division is able to maintain several business addresses for an employer, so that correspondence is directed to the proper address. If you request, we will send correspondence to your representative (accountant, power of attorney, or other agent). We are able to provide better service and protect your unemployment insurance account when you assist in keeping information up to date. You should notify us promptly if you: sell or transfer all or part of your operations; permanently discontinue your payroll; change the business's legal entity; add or delete members of a partnership; change the corporate name; change the trade name; change the corporate officers or principal stock ownership; change the mailing address; change the payroll address; lease or cease to lease employees through a professional employer organization; or engage the services of a management company. These changes should be reported on Form IA 15, *Change of Business Information,* to the Department of Labor, Registration Subsection *(see Unemployment insurance issues—Where can I find the answers?* on page 46).

Notice to employees leaving the job

An employer must give written notice to any employee who is terminated from employment, regardless of the reason for separation or whether it is a temporary or permanent separation. This notice must be provided on a form furnished or approved by the Department of Labor and must include: (1) the employer's name, (2) the New York State employer registration number, (3) the mailing address where payroll records are kept, and (4) a statement instructing the employee to present the notice when filing a claim for benefits. An employer may request a supply of the department's Form IA 12.3, *Record of Employment,* or request approval of an equivalent form from the Department of Labor, Liability and Determination Section.

Benefit payments

To qualify for unemployment benefits, claimants must be out of work through no fault of their own, must demonstrate recent substantial attachment to the labor market, must be ready, willing, and able to work, must be actively seeking suitable employment and must be engaged in a systematic and sustained work search effort. Claimants may also qualify for benefits while attending a training course approved by the Commissioner of Labor.

When an individual files a claim for benefits, a base period is established. A claimant's benefit rate and entitlement to benefits are based on the amount of earnings during the base period.

Benefit rates are primarily determined based on wages reported by employers on quarterly reporting Forms NYS-45 and NYS-45-ATT. When inaccurate or incomplete information is discovered through the benefit claim process, the employer will be assessed a $25 penalty. In some circumstances, employers may be requested to provide wage information for a specific claim.

Benefits paid to claimants are charged to the experience rating accounts (see *Experience rating* below) of employers for whom they worked prior to separation from employment. Every benefit payment charged to an employer's experience rating account may have the effect of increasing that employer's UI rate in future years. When a former employee is determined to be monetarily entitled to benefits, the employer is sent Form LO 400, *Notice of Potential Charges*. Also, employers are advised on Form IA 96, *Notice of Experience Rating Charges,* about all benefit payments to former employees that are charged to their account. Employers should contact the claimant directly if work is available.

Employers should promptly notify the unemployment insurance telephone claim center if: they are unable to contact the claimant for recall; the claimant has declined an offer of re-employment; or they believe the claimant is currently working or otherwise not entitled to benefits. If the charges appear incorrect for any other reason, employers should contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46). This will protect the experience rating account and, at the same time, assist the Unemployment Insurance Division in paying only qualified claimants.

Hearings and appeals

An employer who objects to a ruling concerning liability for unemployment insurance contributions or the benefit status of a former employee has 30 days from the date of the ruling to ask for a hearing before an Administrative Law Judge.

Employers dissatisfied with an Administrative Law Judge's decision can appeal to the Unemployment Insurance Appeal Board within 20 days from the date of mailing of the decision, provided the employer appeared or was represented at the hearing. Instructions for filing an appeal to the Board are shown on the Administrative Law Judge's decision. There is no charge for making these appeals.

Decisions of the Appeal Board may be appealed to Appellate Division of the New York State Supreme Court, Third Department, within 30 days of the mailing of the Appeal Board decision.

E. How are UI rates computed?

The New York State unemployment insurance contributions paid by a liable employer are comprised of a normal and subsidiary rate. In addition, all liable employers, with the exception of nonprofit, governmental, and Indian tribe employers who have elected the benefit reimbursement option, are required to contribute to a separate re-employment service fund.

Normal rate

The normal rate is calculated annually and reflects the employer's individual experience in the unemployment insurance system. Normal rates range from 0% to 8.9%. Normal contributions paid timely are credited to the employer's experience rating account (see *Experience rating* below). A table of normal rates appears on pages 18 and 19.

Subsidiary rate

Employers are required to pay an additional, or subsidiary rate, which varies depending on the balance in the General Account as well as the employer's individual experience rating history. Unlike normal contributions, subsidiary contributions paid are not credited to individual employer accounts but to the General Account. Some of the items that affect the General Account include interest earned on the Unemployment Insurance Fund, balances of employers' accounts that have lapsed, contributions paid late, and negative account balances that exceed 21% of an employer's wages subject to contribution. The subsidiary rate ranges from 0% to .925%. A table of subsidiary rates appears on page 20.

Re-employment service fund

All employers liable for unemployment contributions (this excludes nonprofit, governmental, and Indian tribe employers who have elected the benefit reimbursement option) are required to make an additional contribution to the re-employment service fund each calendar quarter in the amount of 0.075% (.00075) of their quarterly wages subject to contributions (see *Re-employment service fund* on page 14).

Experience rating

New York State unemployment insurance law provides for a system of experience rating under which employers' normal and subsidiary rates are determined annually based on various factors including wages subject to contributions and benefits paid to former employees. For every liable employer, an account is set up to record the employer's experience. All normal contributions received within 60 days of their due date are credited to the account, and all benefits paid to former employees and chargeable to the account are debited. A late payment of contributions due may result in an interest assessment and may also adversely affect an employer's future UI rate (see *Consequences of late or inaccurate reporting* on page 13).

Each employer's account balance is calculated on December 31 of each year (the computation date). The account balance is used to determine the account percentage that, in turn, is used to determine the employer's normal and subsidiary rates.

Account balance

When the contributions paid and credited to an employer's account exceed the benefits charged, the employer has a positive account balance and UI rates are based on the employer's positive account percentage (see *Account percentage* below).

When benefits charged to an employer's account exceed the contributions paid and credited, the employer has a negative account balance and UI rates are based on the employer's negative account percentage. However, if on December 31, the negative account balance exceeds 21% of the wages subject to contributions for the preceding payroll year (October 1 through September 30), the balance in excess of 21% is transferred out of the employer's account and charged to the General Account. For the following year, the employer is assigned a normal rate based on the employer's negative account percentage prior to the transfer and, for the three succeeding years, will be assigned the maximum rate for that year's size of fund index (see *Normal Unemployment Insurance Rates* on pages 18 and 19).

An employer with stable employment who has a negative account balance on December 31 will receive an improvement of four percentage points to their account percentage for the purpose of determining the next year's normal rate. An employer is considered to be stable if the total wages paid by the employer during the payroll year preceding the computation date is greater than or equal to 80% of the previous three years' average total wages. However, the normal rate resulting from this adjustment may not be less than 6.1%.

Account percentage

The account percentage is the balance (positive or negative) in the employer's account on December 31 of any year divided by the average wages subject to contributions for the preceding five payroll years (October through September). If an employer has been liable for 21 or fewer calendar quarters, the average wages subject to contributions will be computed from the initial date of liability to the end of the last payroll year.

If the employer has been liable for twenty-one or fewer consecutive completed calendar quarters and has a positive account percentage, that percentage is multiplied by a benefit equalization factor to establish an equalized account percentage which is used to determine the employer's UI rate. This is done in order to give new employers equal opportunity with established employers to earn rate reductions.

Benefit equalization factor

Number of quarters of employer liability	Employer's benefit equalization factor
5	3.00
6	2.50
7	2.05
8	1.75
9	1.55
10	1.40
11	1.25
12	1.12
13	1.04
14 through 21	1.00

Note: The benefit equalization factor does not apply to an employer with a negative account percentage because it would adversely affect the rate. If an employer with less than 21 quarters of liability becomes a successor to an employer with more than 21 quarters, the benefit factor does not apply.

Size of fund index

To link the normal and subsidiary rates to the overall condition of the unemployment insurance fund, the law establishes various series of rates for qualified employers. A size of fund index determines which of these series is to be used for a particular calendar year. This index is the ratio of the balance in the fund as of December 31 to whichever is the higher: (1) total wages subject to contribution for all employers in the last preceding payroll year, or (2) the average of total wages subject to contribution for all employers for the five preceding payroll years. The size of fund index percentage is shown on the annual notice of UI rates sent to each employer. Size of fund index percentages may be obtained by calling the Department of Labor, Employer Account Adjustment Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

UI rate notification

Employers are notified of their UI rates each year well before the April 30 due date for the first quarter report.

Qualified employer

To be qualified for a normal rate based on experience, an employer or the employer and any predecessor (1) must have been in the system during the five calendar quarters ending on the computation date of any year, (2) must have filed all contribution returns, had an amount of contributions due, or an amount of wages paid determined by the Department of Labor in the three payroll years (the payroll year encompasses the four consecutive calendar quarters ending on September 30) preceding the computation date, and (3) must have paid some remuneration to employees in the payroll year ending September 30 preceding the computation date.

Transfer of experience

When a transfer of business occurs, the acquiring employer takes over the transferring employer's experience rating account. If only a portion is transferred or sold, then only a portion of the account is transferred in proportion to the payroll or number of employees assigned to the transferred organization. The account taken over remains chargeable for benefits paid that are based on employment in the business prior to the transfer. Employers are notified of any resulting change in UI rates.

A transfer of business occurs when an employer transfers or sells all or part of an organization, trade, or business to another employer, and at least one of the following conditions exists:

1. The acquiring employer has assumed any of the transferring employer's obligations.
2. The acquiring employer has acquired any of the transferring employer's goodwill.
3. The acquiring employer has continued or resumed the business of the transferring employer either in the same establishment or elsewhere.
4. The acquiring employer has employed substantially the same employees as those the transferring employer had employed in connection with the organization, trade, business, or part thereof transferred.

A transfer of business also occurs when a business transfers some or all of its workforce, payroll, or both, to another employer, and (at the time of transfer) there is at least ten percent common ownership, management, or control of the two employers. Penalties are assessed if an employer, its advisor, or both, knowingly engage in evasion, misrepresentation, or willful nondisclosure regarding the transfer with the Unemployment Insurance Division.

In the event of any business transfer in whole or in part, employers must notify the Unemployment Insurance Division. Notice of the transfer can be entered on Form NYS-45, or sent directly to the Liability and Determination Section on Form IA 15, *Change of Business Information.* Notice of the transfer must be given to the Division before the end of the year following the calendar year in which the transfer occurred if the transfer is to be recognized for experience rating purposes.

Newly liable employer

Newly liable employers (those who, together with the previous owners of the business, if any, have not been liable for contributions more than one full calendar year before January 1) pay contributions at a set rate on wages paid during the calendar year. The new employer normal rate is calculated each year based on the size of fund index and is equal to the rate for an employer with a positive account percentage of less than 1%, except that the rate will not exceed 3.4%. This rate is in addition to the subsidiary rate and the re-employment service fund rate.

Nonpayment of remuneration

An employer who, together with previous owners of the business, paid remuneration in prior years but has paid no remuneration during the payroll year that ended before the computation date, is assigned the normal rate for an employer with a positive account percentage of less than 1%, except that the rate will not exceed 3.4%. This rate is in addition to the subsidiary rate and the re-employment service fund rate.

Reporting delinquency

Employers who fail to file all required returns by December 31 will have their UI rate calculated using estimated wages established by the Labor Department. Once the rate is assigned, it cannot be lowered even if actual wages paid would have resulted in a lower rate.

Voluntary contributions

An employer may make a voluntary payment in addition to the regular contribution payments in order to reduce a UI rate. Such payment is not refundable. To be considered as of a computation date, the payment must be made no later than the following March 31. Questions regarding voluntary contributions should be directed to the Department of Labor, Employer Account Adjustment Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

Joint accounts

A joint account may be established on application by any two or more qualified employers who are in the same or related kinds of business, or who have a common financial interest. For experience rating purposes, a joint account is treated as though the account belonged to a single employer. This means that all firms in the joint account have the same UI rate. However, each employer must continue to file their own separate quarterly return.

Once approved, a joint account must be maintained for at least two calendar years after the year in which it is established. Thereafter, it may be dissolved upon application by one or more of the employers if prior notice has been given the remaining employers. The dissolution is effective as of December 31 of the year in which the application is filed.

Employers who wish to establish or dissolve a joint account should apply in writing to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

Further information on the calculation of UI rates is available in pamphlet IA 318.12, *Experience Rating*.

On the following three pages are tables showing normal rates based on the size of fund index, and subsidiary rates based on the General Account balance.

New York State Department of Labor Unemployment Insurance Division

Normal unemployment insurance rates

The following table establishes rates for employers with a **negative** account percentage. This table reflects normal rates **only**. Any subsidiary rates or re-employment service fund rates, or both, are added to the normal rate.

Employer's **negative** account percentage	Size of fund index											
	Less than 0%	0% but less than 0.5%	0.5% but less than 1.0%	1.0% but less than 1.5%	1.5% but less than 2.0%	2.0% but less than 2.5%	2.5% but less than 3.0%	3.0% but less than 3.5%	3.5% but less than 4.0%	4.0% but less than 4.5%	4.5% but less than 5.0%	5.0% or more
21.0% or more	8.9	8.7	8.5	8.3	8.1	7.3	6.9	6.5	6.2	6.1	6.0	5.9
20.5% or more but less than 21.0%	8.8	8.6	8.4	8.2	8.0	7.2	6.8	6.4	6.1	6.0	5.9	5.8
20.0% or more but less than 20.5%	8.7	8.5	8.3	8.1	7.9	7.1	6.7	6.3	6.0	5.9	5.8	5.7
19.5% or more but less than 20.0%	8.6	8.4	8.2	8.0	7.8	7.0	6.6	6.2	5.9	5.8	5.7	5.6
19.0% or more but less than 19.5%	8.5	8.3	8.1	7.9	7.7	6.9	6.5	6.1	5.8	5.7	5.6	5.5
18.5% or more but less than 19.0%	8.4	8.2	8.0	7.8	7.6	6.8	6.4	6.0	5.7	5.6	5.5	5.4
18.0% or more but less than 18.5%	8.3	8.1	7.9	7.7	7.5	6.7	6.3	5.9	5.6	5.5	5.4	5.3
17.5% or more but less than 18.0%	8.2	8.0	7.8	7.6	7.4	6.6	6.2	5.8	5.5	5.4	5.3	5.2
17.0% or more but less than 17.5%	8.1	7.9	7.7	7.5	7.3	6.5	6.1	5.7	5.4	5.3	5.2	5.1
16.5% or more but less than 17.0%	8.0	7.8	7.6	7.4	7.2	6.4	6.0	5.6	5.3	5.2	5.1	5.0
16.0% or more but less than 16.5%	7.9	7.7	7.5	7.3	7.1	6.3	5.9	5.5	5.2	5.1	5.0	4.9
15.5% or more but less than 16.0%	7.8	7.6	7.4	7.2	7.0	6.2	5.8	5.4	5.1	5.0	4.9	4.8
15.0% or more but less than 15.5%	7.7	7.5	7.3	7.1	6.9	6.1	5.7	5.3	5.0	4.9	4.8	4.7
14.5% or more but less than 15.0%	7.6	7.4	7.2	7.0	6.8	6.0	5.6	5.2	4.9	4.8	4.7	4.6
14.0% or more but less than 14.5%	7.5	7.3	7.1	6.9	6.7	5.9	5.5	5.1	4.8	4.7	4.6	4.5
13.5% or more but less than 14.0%	7.4	7.2	7.0	6.8	6.6	5.8	5.4	5.0	4.7	4.6	4.5	4.4
13.0% or more but less than 13.5%	7.3	7.1	6.9	6.7	6.5	5.7	5.3	4.9	4.6	4.5	4.4	4.3
12.5% or more but less than 13.0%	7.2	7.0	6.8	6.6	6.4	5.6	5.2	4.8	4.5	4.4	4.3	4.2
12.0% or more but less than 12.5%	7.1	6.9	6.7	6.5	6.3	5.5	5.1	4.7	4.4	4.3	4.2	4.1
11.5% or more but less than 12.0%	7.0	6.8	6.6	6.4	6.2	5.4	5.0	4.6	4.3	4.2	4.1	4.0
11.0% or more but less than 11.5%	6.9	6.7	6.5	6.3	6.1	5.3	4.9	4.5	4.2	4.1	4.0	3.9
10.5% or more but less than 11.0%	6.8	6.6	6.4	6.2	6.0	5.2	4.8	4.4	4.1	4.0	3.9	3.8
10.0% or more but less than 10.5%	6.7	6.5	6.3	6.1	5.9	5.1	4.7	4.3	4.0	3.9	3.8	3.7
9.5% or more but less than 10.0%	6.6	6.4	6.2	6.0	5.8	5.0	4.6	4.2	3.9	3.8	3.7	3.6
9.0% or more but less than 9.5%	6.5	6.3	6.1	5.9	5.7	4.9	4.5	4.1	3.8	3.7	3.6	3.5
8.5% or more but less than 9.0%	6.4	6.2	6.0	5.8	5.6	4.8	4.4	4.0	3.7	3.6	3.5	3.4
8.0% or more but less than 8.5%	6.3	6.1	5.9	5.7	5.5	4.7	4.3	3.9	3.6	3.5	3.4	3.3
7.0% or more but less than 8.0%	6.2	6.0	5.8	5.6	5.4	4.6	4.2	3.8	3.5	3.4	3.3	3.2
6.0% or more but less than 7.0%	6.1	5.9	5.7	5.5	5.3	4.5	4.1	3.7	3.4	3.3	3.2	3.1
5.0% or more but less than 6.0%	6.0	5.8	5.6	5.4	5.2	4.4	4.0	3.6	3.3	3.2	3.1	3.0
4.0% or more but less than 5.0%	5.9	5.7	5.5	5.3	5.1	4.3	3.9	3.5	3.2	3.1	3.0	2.9
3.0% or more but less than 4.0%	5.6	5.4	5.2	5.0	4.8	4.2	3.8	3.4	3.1	3.0	2.9	2.8
2.0% or more but less than 3.0%	5.5	5.3	5.1	4.9	4.7	4.1	3.7	3.3	3.0	2.9	2.8	2.7
1.0% or more but less than 2.0%	5.4	5.2	5.0	4.8	4.6	4.0	3.6	3.2	2.9	2.8	2.7	2.6
Less than 1.0%	5.2	5.0	4.8	4.6	4.4	3.8	3.4	3.0	2.7	2.6	2.5	2.4

New York State Department of Labor Unemployment Insurance Division

Normal unemployment insurance rates

The following table establishes rates for employers with a **positive** account percentage. This table reflects normal rates **only**. Any subsidiary rates or re-employment service fund rates, or both, are added to the normal rate.

Employer's **positive** account percentage	Size of fund index											
	Less than 0%	0% but less than 0.5%	0.5% but less than 1.0%	1.0% but less than 1.5%	1.5% but less than 2.0%	2.0% but less than 2.5%	2.5% but less than 3.0%	3.0% but less than 3.5%	3.5% but less than 4.0%	4.0% but less than 4.5%	4.5% but less than 5.0%	5.0% or more
Less than 1.0%	4.1	3.9	3.7	3.5	3.3	2.9	2.5	2.1	1.9	1.8	1.7	1.6
1.0% or more but less than 2.0%	4.0	3.8	3.6	3.4	3.2	2.8	2.4	2.0	1.8	1.7	1.6	1.5
2.0% or more but less than 3.0%	3.9	3.7	3.5	3.3	3.1	2.7	2.3	1.9	1.7	1.6	1.5	1.4
3.0% or more but less than 4.0%	3.8	3.6	3.4	3.2	3.0	2.6	2.2	1.8	1.6	1.5	1.4	1.3
4.0% or more but less than 5.0%	3.7	3.5	3.3	3.1	2.9	2.5	2.1	1.7	1.5	1.4	1.3	1.2
5.0% or more but less than 5.5%	3.6	3.4	3.2	3.0	2.8	2.4	2.0	1.6	1.4	1.3	1.2	1.1
5.5% or more but less than 5.75%	3.5	3.3	3.1	2.9	2.7	2.3	1.9	1.5	1.3	1.2	1.1	1.0
5.75% or more but less than 6.0%	3.4	3.2	3.0	2.8	2.6	2.2	1.8	1.4	1.2	1.1	1.0	0.9
6.0% or more but less than 6.25%	3.3	3.1	2.9	2.7	2.5	2.1	1.7	1.3	1.1	1.0	0.9	0.8
6.25% or more but less than 6.5%	3.2	3.0	2.8	2.6	2.4	2.0	1.6	1.2	1.0	0.9	0.8	0.7
6.5% or more but less than 6.75%	3.1	2.9	2.7	2.5	2.3	1.9	1.5	1.1	0.9	0.8	0.7	0.6
6.75% or more but less than 7.0%	3.0	2.8	2.6	2.4	2.2	1.8	1.4	1.0	0.8	0.7	0.6	0.5
7.0% or more but less than 7.25%	2.9	2.7	2.5	2.3	2.1	1.7	1.3	0.9	0.7	0.6	0.5	0.4
7.25% or more but less than 7.5%	2.8	2.6	2.4	2.2	2.0	1.6	1.2	0.8	0.6	0.5	0.4	0.3
7.5% or more but less than 7.75%	2.7	2.5	2.3	2.1	1.9	1.5	1.1	0.7	0.5	0.4	0.3	0.2
7.75% or more but less than 8.0%	2.6	2.4	2.2	2.0	1.8	1.4	1.0	0.6	0.4	0.3	0.2	0.1
8.0% or more but less than 8.25%	2.5	2.3	2.1	1.9	1.7	1.3	0.9	0.5	0.3	0.2	0.1	0.0
8.25% or more but less than 8.5%	2.4	2.2	2.0	1.8	1.6	1.2	0.8	0.4	0.2	0.1	0.0	0.0
8.5% or more but less than 8.75%	2.3	2.1	1.9	1.7	1.5	1.1	0.7	0.3	0.1	0.0	0.0	0.0
8.75% or more but less than 9.0%	2.2	2.0	1.8	1.6	1.4	1.0	0.6	0.2	0.0	0.0	0.0	0.0
9.0% or more but less than 9.25%	2.1	1.9	1.7	1.5	1.3	0.9	0.5	0.1	0.0	0.0	0.0	0.0
9.25% or more but less than 9.5%	2.0	1.8	1.6	1.4	1.2	0.8	0.4	0.0	0.0	0.0	0.0	0.0
9.5% or more but less than 9.75%	1.9	1.7	1.5	1.3	1.1	0.7	0.3	0.0	0.0	0.0	0.0	0.0
9.75% or more but less than 10.0%	1.8	1.6	1.4	1.2	1.0	0.6	0.2	0.0	0.0	0.0	0.0	0.0
10.0% or more but less than 10.25%	1.7	1.5	1.3	1.1	0.9	0.5	0.1	0.0	0.0	0.0	0.0	0.0
10.25% or more but less than 10.5%	1.6	1.4	1.2	1.0	0.8	0.4	0.0	0.0	0.0	0.0	0.0	0.0
10.5% or more	1.5	1.3	1.1	0.9	0.7	0.3	0.0	0.0	0.0	0.0	0.0	0.0

New York State Department of Labor Unemployment Insurance Division

Subsidiary rates

The following table establishes rates for employers with a positive or negative account percentage. This table reflects subsidiary rates only. Any normal rates or re-employment service fund rates, or both, are added to the subsidiary rate.

Employer's account percentage	General account balance (in millions of dollars)										
	Less than $0	$0 or more but less than $75	$75 or more but less than $150	$150 or more but less than $225	$225 or more but less than $300	$300 or more but less than $375	$375 or more but less than $450	$450 or more but less than $525	$525 or more but less than $600	$600 or more but less than $650	$650 or more
Less than 0.0% **(negative)**	.925%	.825%	.725%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%
0.0% or more but less than 5.5%	.625%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%
5.5% or more but less than 7.5%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%
7.5% or more but less than 9.0%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%
9.0% or more	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%	.000%

F. Controlling unemployment insurance costs

Accurate and timely reporting and payment

It is important that employers file complete and accurate quarterly returns and pay contributions due on time. If contributions are not paid when due, interest is assessed at the rate of 12% per year. Contributions paid more than 60 days after their due date are not credited to the employer's account for the purpose of calculating UI rates. An increased rate may result. The failure to file all required returns by December 31 will result in estimated wages being used in the calculation of unemployment insurance rates. This may have an adverse effect on the rate.

Additional penalties may also be imposed for the failure to file accurate and timely returns (see *Summary of penalties,* page 35).

Wages reported quarterly on Form NYS-45, Part C or Form NYS-45-ATT are used in the calculation of benefits for former employees. Inaccurate reporting can result in costly benefit overpayments. Also, a penalty may be assessed if inaccurate or incomplete wage reporting is discovered through a benefit claim (see *Benefit payments* on page 15), or through an examination of an employer's records (see *Summary of penalties*, page 35).

Review of notice of benefit entitlement or payment

When a former employee files for unemployment insurance and is determined to be monetarily entitled to collect benefits, we will send the employer Form LO 400, *Notice of Potential Charges*. It is important to respond to this Notice timely and adequately, in order to report any discrepancy in wage information or disqualifying information since this information will, in some cases, affect the payments made to the claimant and the charges to the employer's experience rating account.

To be "timely" the employer must ensure the Department of Labor receives a response within 10 calendar days of the date on the notice. To be considered "adequate" the response must:

1. specify the reason for separation, or other issue affecting the claimant's eligibility of entitlement for benefits;
2. answer, in good faith, all questions in detail; and
3. provide information sufficient for the Department of Labor to render an accurate determination regarding the claimant's eligibility or entitlement for benefits. Relevant supporting documentation should also be submitted.

Unemployment insurance benefits paid to claimants are charged to the accounts of employers for whom they worked. Every benefit payment charged to an employer's experience rating account may have the effect of increasing that employer's UI rate in future years. Employers are advised on Form IA 96, *Notice of Experience Rating Charges,* about all benefit payments to former employees that are charged to their accounts. This gives employers the opportunity to report any benefit payments they believe were incorrectly made. Form IA 96, and other similar requests for information pertaining to an unemployment insurance claim, in addition to Form LO 400, must be received by the Department of Labor within the number of days specified in the request and must provide adequate information, as explained above. Employers should contact the claimant directly if work is available. Employers should promptly notify the unemployment insurance telephone claim center if: they are unable to contact the claimant for recall; the claimant has declined an offer of re-employment; or, they have information they were not aware of when they received the LO 400 that may affect the claimant's entitlement to UI benefits. If the charges appear incorrect for any other reason, employers should contact the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues—Where can I find the answers?* on page 46).

Fraud control

Programs have been developed to detect and prevent benefit claim fraud and abuse. These include the Wage Reporting System, which compares the payroll information you submit each quarter with unemployment insurance benefits paid. Occasionally, you may be asked to provide detailed information for a specific claim to determine if it is properly paid. The success of this program and others relies heavily on your prompt assistance and cooperation. Unemployment insurance fraud increases the financial burden on employers who contribute to the system. Any suspected instances of claimant fraud should be reported on our toll free Fraud Hotline at 1 888-598-2077, or to an unemployment insurance fraud investigation office (see page 48).

Shared work

Shared work is a voluntary program providing an alternative to layoffs for employers who have two or more employees and who are faced with a temporary decline in business. Rather than laying off a percentage of the work force to cut costs, an employer can reduce the hours and wages of all, or a particular group, of employees. The employees whose hours and wages are reduced can receive partial unemployment insurance benefits to supplement their lost wages. The Shared Work Program helps employers avoid some of the burdens that accompany a layoff situation. If employees are retained during a temporary slowdown, employers can

quickly gear up when business conditions improve. Employers are then spared the expense of recruiting, hiring, and training new employees; and employees are spared the hardships of full unemployment. A Shared Work Program application may be completed and submitted online by accessing your *Employer Home Page* at *www.labor.ny.gov* under *Employer Information*; log on to *Labor Online Services* and select the link for the *SW Program*. Applications should be submitted two weeks before the start of the plan. Questions regarding the Shared Work Program may be directed to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 46).

G. Unemployment insurance benefits

This section reviews the rules under which your former employees can collect unemployment insurance benefits, and explains what you should do when a former employee files a claim for benefits.

Rules for receiving unemployment benefits

To qualify for unemployment benefits, claimants:

- must demonstrate recent substantial attachment to the labor market;
- must be out of work through no fault of their own;
- must be ready, willing, and able to work; **and**
- must be actively seeking employment.

A claimant who has qualified for benefits according to the guidelines above, can have the active work search requirement waived and remain eligible for benefits if the claimant is attending a training course approved by the Commissioner of Labor.

Employment and earnings requirement

Effective January 1, 2014, to qualify for benefits, the law requires that a person:

1. Work in covered employment in at least two quarters out of the first four of the last five completed calendar quarters prior to the filing of the claim for benefits, with wages of at least 221 times the minimum wage (rounded down to the nearest $100) paid in the quarter with the highest wages, and total wages paid equal to at least one and one-half times the wages in the quarter with the highest wages.* **or**
2. Work in covered employment in at least two quarters out of the last four completed calendar quarters prior to the filing of the claim for benefits, with wages of at least 221 times the minimum wage (rounded down to the nearest $100) paid in the quarter with the highest wages, and total wages paid equal to at least one and one-half times the wages in the quarter with the highest wages.*

* For this purpose, the higher-quarter earnings are capped at 22 times the current maximum benefit rate.

Those claimants who have some covered employment and earnings in the last five completed calendar quarters prior to filing the claim but do not qualify for benefits under either of the above conditions due to insufficient earnings, may have their base period of the first four of the last five completed calendar quarters extended by the equivalent number of quarters they received Workers' Compensation or Volunteer Firefighters' Benefit Law payments up to a maximum of two quarters.

Wages earned in employment that was lost due to misconduct or the commission of a felony in connection with that employment cannot be used to establish a valid claim under either of the above conditions. Those wages will not be used in the computation of the claimant's benefit rate.

Conditions that affect eligibility for benefits

Claimants are **ineligible** for benefits if:

1. They left their job without good cause or due to marriage; were dismissed for job-related misconduct; or, after filing for benefits, refused suitable employment without good reason. Benefits are denied until they work again and earn an amount equal to at least 10 times their weekly benefit rate and then lose that later job through no fault of their own. A claimant may or may not be eligible if the reason for leaving the employer is to follow a spouse.
2. They are not ready, willing, and able to work or not actively seeking employment for which they are fitted by training and experience. Benefits are denied for as long as any of these conditions exist.
3. They are unemployed because of a strike, lockout, or other industrial controversy in the establishment where they work. The suspension of benefits lasts for 49 days, unless the dispute ends earlier, and applies to all employees, whether or not they are involved in the dispute.
4. They lose their employment because of a criminal act that involves the commission of a felony in connection with their job. No benefits are payable for a year after discharge.
5. They are not totally unemployed. No benefits are payable for any day on which they performed some work whether full-time or part-time, or on a self-employed or freelance basis.
6. They are corporate officers who are devoting any time or effort to the corporation's business, even though wages or salaries may not be paid at that time.
7. They are receiving vacation or holiday pay for a previously designated period.
8. They are employees of educational institutions and file claims for benefits based on such employment between academic years or terms and during customary vacation or holiday recesses, provided they have a contract or reasonable assurance of employment in the ensuing academic period.
9. They are receiving weekly dismissal pay/severance payments that are more than the maximum benefit amount. This, however, does not apply if the initial severance payments are made more than 30 days after the last day of employment.

Note: For claims filed January 1, 2014 or later, after receiving 10 weeks of benefits, claimants who do not have a definite date to return to work and do not obtain employment through a union hiring arrangement are required to accept employment they are capable of performing, even if they are not suited for the job by training or experience, as long as the position pays not less than the prevailing local wage for the job and 80% of the claimant's highest calendar-quarter earnings in the base period.

How much can a jobless worker receive?

The benefit rate for a week of total unemployment is calculated in the following way:

1. If claimant has earnings in all 4 base period (or alternate base period) quarters, the benefit rate is one twenty-sixth of the worker's wages in the calendar quarter with the highest wages during the base period. If highest quarter wages are $3,575 or less, the benefit rate is one twenty-fifth of wages.
2. If claimant has earnings in only 2 or 3 base period (or alternate base period) quarters:
   - If high quarter > $4,000, benefit rate is 1/26 of the average of two highest quarters
   - If high quarter > $3,575 and <= $4,000, benefit rate is 1/26 of high quarter
   - If high quarter <= $3,575, benefit rate is 1/25 of high quarter.

The minimum weekly benefit rate is currently $64. This will be increased to $100 beginning the first Monday of October 2014. The maximum weekly benefit rate is currently $405, but will be increased annually, beginning the first Monday of October in each year, as shown below:

Year	Maximum weekly benefit	Year	Maximum weekly benefit
		2019	36% of the average weekly wage
		2020	38% of the average weekly wage
2014	$ 420	2021	40% of the average weekly wage
2015	425	2022	42% of the average weekly wage
2016	430	2023	44% of the average weekly wage
2017	435	2024	46% of the average weekly wage
2018	450	2025	48% of the average weekly wage

2026 and each year thereafter, 50% of the average weekly wage, but in no event will the maximum benefit amount be reduced from the previous year.

The first week of unemployment after the claim is filed is a waiting week for which no benefits are paid.

Partial benefits can be paid for any week in which a claimant works no more than three days and earns no more than the maximum benefit rate. Benefits under the state's regular unemployment insurance program are payable for up to 26 weeks of total unemployment at the full weekly benefit rate or an equivalent amount during a greater number of weeks if the claimant is partially employed. These benefits are payable during the claimant's benefit year – the 52-week period following the week in which the claim is filed.

An individual who qualifies for benefits under the quarterly wage criteria may apply within 10 days of receipt of such notification to have the weekly benefit amount re-computed, based upon one-half his or her average weekly wage for all employment during the base period that established the claimant's eligibility. The burden of proof of these earnings falls on the claimant.

During periods of high unemployment, up to 13 additional weeks of extended benefits or a varying amount of emergency benefits may be payable. Also, claimants who are eligible for regular benefits while attending a training course approved by the Commissioner may be eligible for up to 26 additional weeks of benefits if their regular benefits expire while they are still in training. These additional 26 weeks are not chargeable to the employer's account.

Pension reduction. Individuals who are eligible for unemployment insurance and are receiving a retirement pension financed in whole or in part by a base-period employer will have their weekly benefits reduced when their base-period employment with that employer resulted in eligibility for the pension or an increase in the amount of the pension.

Effective January 1, 2014, if the employer contributed to the pension at all, the claimant's benefit rate is reduced by the pro-rated weekly amount of the pension.

If the claimant was the sole contributor to the pension, no reduction applies.

Social security benefits are not deductible from the benefit rate.

Workers' compensation limitation. The unemployment insurance benefits to which a claimant may be entitled are limited to the difference between the amount of workers' compensation benefits and 100% of the claimant's average weekly wage.

Providing information about benefit claims

Reporting earnings

Benefit rates and claimant entitlement are primarily determined based on wages reported by employers on Forms NYS-45 and NYS-45-ATT. In some circumstances, employers may be requested to provide additional wage information for a specific claim.

Employers should be sure that all employment and wages are correctly reported by the due date. Errors can be costly because they may result in incorrect charges to an employer's account, which may increase future years' UI rates and delay the payment of benefits to the claimant. Also, penalties may be imposed for failure to file returns, or failure to file complete, accurate, and timely returns.

Notice to employees leaving the job

An employer must give written notice to any employee who goes off the payroll, regardless of the reason for separation or whether it is a temporary or permanent separation. This notice must be provided on a form furnished or approved by the Department of Labor and must include: (1) the employer's name, (2) the New York State employer registration number, (3) the mailing address where payroll records are kept, and (4) a statement instructing the employee when filing a claim to provide the information on the form to the unemployment insurance claims center. An employer may request a supply of the department's Form IA 12.3, *Record of Employment* (to order, see page 51), or request approval of an equivalent form from the Liability and Determination Section (call (518) 485-8589).

Charging of benefits

Base period

When an individual files a claim for benefits, a base period is established. This period is either the first four of the last five completed calendar quarters or the last four completed calendar quarters prior to the filing of the claim. A claimant's benefit rate and entitlement to benefits are based on the amount of earnings during the base period.

Notification of entitlement

When an individual filing for benefits is determined to be entitled, a Form LO 400, *Notice of Potential Charges*, is sent to all employers whose experience rating accounts might be charged for benefits paid to that individual. Any discrepancies in wage information or any potentially disqualifying information should be reported immediately. Do not return the form, unless you are making changes or know of any reason why the claimant should not be paid.

Charging formula

Benefits are first charged to the account of the last employer for whom the claimant worked prior to filing the claim for benefits. The last employer is charged for an amount equal to seven times the claimant's weekly benefit amount, regardless of the total wages paid to the claimant by that employer. Thereafter, benefits are charged in a proportional manner to all base-period employers according to how the amount of wages an employer paid relates to the claimant's total base-period wages. Exceptions to the above charging formula may occur as a result of employment with out-of-state employers or the federal government.

A claimant is entitled to up to 26 regular benefit payments, all of which are chargeable to employers' accounts. Also, during periods of high unemployment, the claimant may receive up to 13 additional weeks of extended benefit payments. Half of each such payment is chargeable to base-period employers and half to the federal government. Accounts of governmental employers, however, are chargeable for the total amount of the extended benefit payment.

Under the Self-Employment Assistance Program, benefits may be available to assist certain unemployed persons in becoming self-employed. Participants in the program receive benefits as they pursue, on a full-time basis, activities related to the establishment of a business. The activities may include training. Benefits are charged to employers' accounts in the same manner as regular benefits.

Claimants who are eligible for benefits while attending a training course approved by the Commissioner of Labor may be eligible for up to 26 additional weeks of benefit payments if their regular benefits expire while they are still in training. These additional benefits are not chargeable to base-period employers.

Notification of charges

Employers are advised monthly on Form IA 96, *Notice of Experience Rating Charges*, about all benefit payments to former employees that are charged to their accounts. The charges shown represent weekly payments except for the payments made under the Interstate Plan for Combining Wage Credits, which are shown as quarterly amounts.

Employers electing the benefit reimbursement option* are notified on Form IA 96R, *Notice of Benefit Reimbursement Charges*. Form IA96 and Form IA96R give employers the opportunity to report any benefit payments they believe were incorrectly made. Forms IA96, IA96R, and other similar requests for information pertaining to an unemployment insurance claim, in addition to Form LO 400, must be received by the Department of Labor within the number of days specified in the request and must provide adequate information, as explained in "*Review of notice of benefit entitlement or payment"* on page 20.

* Nonprofit organizations organized and operated for religious, charitable, scientific, literary, or educational purposes (those exempt under section 501 (c)(3) of the Internal Revenue Code), governmental entities, and Indian tribes may elect to discharge their obligations under the unemployment insurance law by reimbursing the unemployment insurance fund for benefits paid to their former employees and charged to their accounts in lieu of contributions. A request to elect the reimbursement option must be submitted in writing to the Unemployment Insurance Division. Additional information on the benefit reimbursement option is available in pamphlet IA 318.13, *Benefit Reimbursement,* or if an Indian Tribe, pamphlet IA 318 IT, *Unemployment Insurance Coverage for Indian Tribes* (to order, see page 51).

Exceptions to the general charging formula

Misconduct. A claimant who was discharged for reasons that constitute misconduct under the unemployment insurance law may not use wages earned with that employer to establish a claim for benefits. The account of such an employer will not be charged under these circumstances provided the employer responds in a timely and adequate manner to Form LO 400, *Notice of Potential Charges,* or any other request for information.

Leaving employment without good cause. An employer's account will not be charged if a claimant voluntarily left employment for reasons that did not constitute good cause, provided the employer responds in a timely and adequate manner to Form LO 400, *Notice of Potential Charges,* or any other request for information.

Work-release program. An employer's account will not be charged for benefits that are based on work done by a claimant as part of a work-release program while the claimant was an inmate of a correctional institution, providing the work-release employment was terminated solely because the inmate relocated to another area as a condition of parole or voluntarily relocated to another area immediately after being released from the correctional institution.

If you have questions concerning charges to your account based on a discharge for misconduct, leaving employment without good cause, or work-release issues, please write to the Unemployment Insurance Office where the claim was filed providing details, including a copy of any relevant determination issued by the Department of Labor. The office address appears on the initial Form LO 400. Also see *Telephone claims center (TCC)* on page 47.

Claimant who continues to be employed part-time. An employer's account will not be charged for a claimant's benefits if:

1. The claimant worked for the employer on a part-time basis;
2. The part-time employment for that employer included work during the four weeks immediately preceding the filing of a claim; and
3. The claimant continues to work for that employer on a part-time basis without significant interruption and to the same extent as during the weeks immediately preceding the filing of the claim.

Combined wage claims. Under the Interstate Plan for Combining Wage Credits, a claimant who has covered employment and earnings in more than one state that participates in this plan may have the claim determined on the basis of combined employment and earnings in all participating states. The claimant's entitlement to benefits is then determined under the laws and regulations of the state in which the claim for benefits is filed.

New York State, as a participant in the Interstate Plan for Combining Wage Credits, transfers remuneration under the New York State unemployment insurance law to other participating states and also accepts employment and earnings covered under the laws of other participating states to be combined for the purpose of determining the claimant's entitlement to benefits. The paying state then periodically bills each participating state for benefits paid to the claimant in the same proportions the claimant's earnings in each state bear to the total earnings used to determine the claimant's entitlement to benefits. Benefits charged to New York State under the Interstate Plan for Combining Wage Credits are then charged to the experience rating accounts of the New York State employers.

New or corrected wage information. If an employer does not provide new or corrected wage information in a timely or adequate manner in response to the initial Form LO 400, *Notice of Potential Charges*, or any other request for information, in most cases, adjustments to benefit rates or experience rating charges will be prospective as of the date the information was received by the Department. However, the adjustments will be retroactive to the beginning of the claim if the new information results in a higher benefit rate.

Recalculation of experience rating charges

In instances where the last employer paid the claimant less than or equal to six times his or her benefit rate from the beginning of the base period through the filing date of the claim, the employer may request a credit for a portion of the first seven weeks of charges.

Effect of charges on UI rates

Benefit payments charged to an employer's experience rating account may have the effect of increasing that employer's UI rate in future years.

When a former employee files for unemployment insurance and is determined eligible to collect benefits, the Department of Labor sends to the employer Form LO 400, *Notice of Potential Charges*. This form gives the employer an early opportunity to verify that benefits are being paid to former employees.

If an employer is in a position to re-employ a claimant, the claimant should be contacted directly. The claimant's address will appear on the initial Form LO 400. The Unemployment Insurance Office or telephone claims center should be notified if the claimant refuses rehire or fails to report to work. The employer should supply: the date the claimant refused work or failed to report to work, the type of employment offered, and the wages offered for the position. The address of the office where the claim for benefits was filed is shown on Form LO 400. Offices are also identified on Form IA 96, *Notice of Experience Rating Charges*, under the heading *Local Office*. See *Telephone claims center (TCC)* on page 47 of this publication.

An employment offer may be considered as acceptable to the claimant if the prevailing wage for similar work is offered, even if the amount is less than the claimant earned on the last job, or is less than the salary desired. After 13 full weeks of unemployment insurance benefits are paid, the claimant may be required to accept employment that the claimant is capable of performing if the prevailing wage is offered and the pay is at least 80% of the claimant's base period high-quarter wages.

If the employer believes that the claimant is not eligible for benefits, the employer should contact the Unemployment Insurance Office where the claim for benefits was filed. For examples of eligibility issues, see *Conditions that affect eligibility for benefits* on page 21.

If it is believed that benefits were improperly charged (for example, the claimant never worked for the employer), the employer should write to the New York State Department of Labor, Liability and Determination Section, W A Harriman Campus, Albany NY 12240-0322 or telephone (518) 457-2635. Please provide the claimant's name and social security number, along with the reasons you believe the charges are incorrect.

If the employer believes that the claimant has been working at the same time benefits were paid, or has otherwise fraudulently collected benefits, the employer should write to the Department of Labor, Specialized Services and Liability Unit, Bldg 12, Room 322, W A Harriman Campus, Albany NY 12240 or call the 24-hour toll-free fraud hotline at 1 888 598-2077.

2. Tax Department — Wage reporting information and instructions

A. Purpose

This section explains the requirements for reporting gross wages (or other payments subject to withholding) to New York State on Part C of Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return,* or Form NYS-45-ATT, *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return - Attachment*, if applicable. **Note:** Forms NYS-45 and NYS-45-ATT may be filed on paper or online using the Tax Department's Web File system (at *www.tax.ny.gov)*.

The Tax Department is required to collect wage reporting information based on definitions used by the Department of Labor in administering the unemployment insurance program. Every employer who is liable under the provisions of the New York State unemployment insurance law is required to file a quarterly wage report with the Tax Department on Form NYS-45, Part C, or Form NYS-45-ATT (whichever is applicable). This includes voluntary elections, and also nonprofit organizations, governmental entities, and Indian tribes who meet their unemployment insurance obligations through the reimbursement option (see C, *Liable employer,* below). These employers must complete and file columns a, b, and c of Form NYS-45, Part C, or Form NYS-45-ATT showing the name, social security number, and gross wages paid to each employee performing services in employment. This is the case, whether or not the wages of the employee are subject to withholding of tax or payments of tax under Article 22 of the Tax Law (Personal Income Tax Law). An employer who is not liable for unemployment insurance **is not required** to complete Part A or Part C, column c of Form NYS-45 or NYS-45-ATT. If the employer pays wages (or other payments) subject to withholding or withholds New York State, New York City, or Yonkers income tax from wages or other payments subject to withholding, see *Withholding information and instructions,* beginning on page 26.

State of jurisdiction — Generally, employees who work entirely within New York State are covered under New York State's unemployment insurance law, and all of their earnings must be reported as gross wages for wage reporting purposes on Form NYS-45 (or NYS-45-ATT, if applicable). However, if an employee's services are performed both in and outside New York State, the employer must determine whether the services are covered under New York State for unemployment insurance and wage reporting purposes. For more information, see *State of jurisdiction* on page 6 of this publication.

B. Employer for wage reporting purposes

The term ***employer*** has the same meaning as it has for New York State unemployment insurance purposes and includes the following for whom an employee has performed services in employment (see part F, *Employment*, below for a definition of employment):

— any person, partnership, firm, association, public or private, domestic or foreign corporation, domestic or foreign limited liability company (LLC) or limited liability partnership (LLP), legal representative of a deceased person, or receiver, trustee, or successor of any of these;

— a household (domestic) employer;

— a corporation, unincorporated association, community chest fund, or foundation organized exclusively for religious, charitable, scientific, literary, or educational purposes, of which no part of the net earnings inures to the benefit of any private shareholder or individual (e.g., a nonprofit organization);

— an employer of agricultural labor (for information regarding the definition of *agricultural employer*, see page 10 and pamphlet IA 318.11, *Agricultural Employment*, which is available from the New York State Department of Labor);

— the State of New York, municipal corporations and other governmental subdivisions, and any instrumentality of one or more of these (e.g., a governmental entity); and

— Indian tribes

C. Liable employer

The conditions of employer liability vary among nonprofit, governmental, household (domestic), agricultural and all other employers. Only employers who are liable under the unemployment insurance rules (see *Liable employers,* page 11) are required to report employee wage information on Form NYS-45, Part C or Form NYS-45-ATT (whichever is applicable).

Voluntary election — An employer who is not liable for unemployment insurance contributions may voluntarily elect to become liable by filing an application with and receiving approval from the Department of Labor. An employer is deemed liable on the date the unemployment insurance coverage begins and must file Form NYS-45 and Form NYS-45-ATT, if applicable, reporting the necessary wage information for the calendar quarter in which the insurance coverage beginning date occurs.

D. Employers of household help

Employers of household employees may be subject to wage reporting requirements. Although withholding income tax from wages paid to a household employee is only voluntary and is not required, the wage reporting rules **do** require domestic employers who are liable under the New York State unemployment insurance law to report quarterly the household employee's name, social security number, and wages paid on Form NYS-45, Part C. For more information on filing Form NYS-45, see Form NYS-45-I, *Instructions for Form NYS-45. See Need help?* on page 45 of this booklet if you need forms.

E. Employees who must be included in wage reports

Every employer (as previously defined) must complete and file columns a, b, and c of Form NYS-45, Part C, or NYS-45-ATT (whichever is applicable), showing the name, social security number, and gross wages paid to each employee performing services in employment. This is the case, whether or not the wages of the employee are subject to withholding of tax or payments of tax under Article 22 of the Tax Law (Personal Income Tax Law).

F. Employment

Employment is the performance of services under any contract for hire (whether written or implied) for compensation. Unless specifically excluded by the unemployment insurance law, all employment performed for a liable employer must be reported on Form NYS-45 or NYS-45-ATT, regardless of whether it is on a part-time, full-time, temporary, seasonal, or casual basis. Officers of all corporations, including professional, subchapter S corporations, and other closely held corporations, who perform services for the corporation, are employees of that corporation. A manager of a limited liability company (LLC) is an employee unless the manager is defined as a member. Compensation for services provided by an individual defined as an employee must be reported on Form NYS-45, Part C (or NYS-45-ATT, if applicable).

If two or more financially related corporations concurrently employ the same individual(s) and pay the concurrently employed individual(s) through a common paymaster, which is one of the related corporations, the common paymaster may include the wages it pays to such concurrently employed individual(s) on its Form NYS-45, Part C (or NYS-45-ATT, if applicable), if also reporting for unemployment insurance in the same manner (see *Joint employment (Common Paymaster)* in the chart on page 9, and *Common paymaster* on page 12). However, if similar reporting is denied for federal purposes, each such corporation must report its share of the wages paid to such employee(s) on its Form NYS-45, Part C (or NYS-45-ATT, if applicable).

There are certain types of employees included in the definition of employment for all employers, as well as certain types of employees excluded depending on the type of employer.

For a detailed description of the types of employees specifically included and excluded from the definition of employment, see the *Covered and excluded employment* chart beginning on page 8.

G. Gross wages for purposes of wage reporting

The term *gross wages* has the same meaning as the term *remuneration* for unemployment insurance purposes. Gross wages for purposes of wage reporting includes all remuneration before any allocation, apportionment, or deduction, and before considering any dollar limitation contained in any law that excludes from wages or compensation an amount paid in excess of a dollar limitation.

Remuneration — means every form of compensation paid by an employer to an employee for employment (whether paid directly or indirectly) and includes salaries, commissions, bonuses and the reasonable monetary value of board, rent, housing, lodging, or similar advantage received.

If gratuities are received by the employee in the course of employment from a person other than the employer, the value of the gratuities (as determined by the Department of Labor) must be included as part of the employee's remuneration paid by the employer.

Other wages for purposes of wage reporting — Due to the provisions of FUTA, special rules apply to certain types of payments. Employers who are liable under FUTA must report quarterly, on a separate Form NYS-45-ATT, payments of severance pay, the first six months of sick pay, and reimbursed moving expenses. The separate Form NYS-45-ATT should be identified by marking the *Other wages* box in the upper right-hand corner of the front of the return.

Nonprofit organizations, governmental entities, Indian tribes, and other employers not liable under FUTA are **not** required to report severance pay, the first six months of sick pay, or reimbursed moving expenses.

All employers (whether or not they are liable under FUTA) that pay wages to daytime students in elementary and secondary schools should report such wage payments quarterly as regular gross wages on Form NYS-45, Part C, or Form NYS-45-ATT (whichever is applicable).

For information on whether specific types of income are reportable as gross wages on Forms NYS-45 or NYS-45-ATT, see the *Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income,* beginning on page 38.

H. Electronic reporting of wage information

New York State requires employers that report 250 or more employees or payees in four consecutive quarters to upload wage reporting information using the Tax Department's Web site (see *Need help?* on page 45). Other employers may elect to submit their wage reporting electronically, by voluntarily uploading the information, or by entering the wage reporting information (for up to 1000 employees) into the Web NYS-45.

For more details on how to register to begin filing information electronically, visit the Tax Department's Web site (see *Need help?* on page 45).

I. Annual wage and withholding totals

You are required to report the annual total federal gross wages subject to withholding and the annual total amount of New York State, New York City, and Yonkers tax withheld for **every** employee you had during the year on the last quarterly return filed for the calendar year. This information is reported on the fourth quarter NYS-45 return, Part C, columns d and e unless you permanently ceased paying wages subject to withholding or you are a seasonal employer who does not file a fourth quarter return. See part V, *Seasonal employers*, on page 32.

For more information on reporting wages paid to governmental employees, see Form NYS-45-I.

The total amount for all employees in column e should equal the total for all four calendar quarters on Form NYS-45, Part B, line 15. For more information on filing Form NYS-45, see Form NYS-45-I.

3. Tax Department — Withholding information and instructions

A. Purpose

This section provides a summary of an employer's responsibilities for withholding New York State income tax, New York City resident tax, Yonkers resident tax surcharge and Yonkers nonresident earnings tax. For specific information regarding filing requirements, due dates, and completion of forms, see the instructions for the particular withholding form(s) needed.

For withholding tax purposes, New York State generally conforms to federal withholding tax concepts.

B. Employer for withholding purposes

An employer is any person or organization qualifying as an employer on the basis of the instructions contained in federal Publication 15, *Circular E, Employer's Tax Guide*, and maintaining an office or transacting business within New York State, whether or not a paying agency is maintained within the state.

Out-of-state employers who are not incorporated or licensed under New York State law and do not maintain an office or transact business in New York State are not required to withhold New York State, New York City, or Yonkers income taxes on the wages of employees who reside in New York State. However, if an out-of-state employer agrees to withhold New York State, New York City, or Yonkers income taxes for the convenience of the employee(s), the employer is then subject to New York State withholding requirements as outlined in this publication. If the employer does not withhold New York State, New York City, or Yonkers income taxes, the employee may be required to make estimated payments of such income taxes using Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals*.

C. New York State employer's identification number

For your convenience, the New York State, New York City, and Yonkers identification number is the same as the federal employer identification number (EIN) if one has been assigned to you by the Internal Revenue Service (IRS).

Each employer must have only one federal identification number. If you have been assigned more than one federal identification number and have not been advised which one to use, notify the IRS of the numbers you have, the name and address to which each number was assigned, and the address of your principal place of business. The IRS will then advise you which number to use. You must also advise the New York State Tax Department of all identification numbers assigned to you and identify your correct number.

If you have been assigned a temporary New York State identification number and later get a federal number, notify the Tax Department of the federal number received by filing Form DTF-95, *Business Tax Account Update*, and use the federal number for all future withholding purposes.

If you become the new owner of an existing business, you cannot use the federal EIN of the former owner unless you acquired the business by a purchase of corporate stock. You must apply for and acquire your own new EIN. For application forms and more information about who needs an EIN, contact your local IRS office, go to the IRS Web site *(www.irs.gov)*, or call the IRS Business and Specialty Tax Line at 1 800 829-4933.

Employers that are assigned a New York State identification number (federal EIN plus two-digit suffix) for the purpose of reporting as separate entities must use the assigned New York State number(s).

You must list your identification number on the various forms mentioned in these instructions and in correspondence with the Tax Department.

D. Personal responsibility

All taxes required to be withheld pursuant to the Tax Law constitute a trust fund. In addition to other penalties (see *Summary of penalties* on page 35), any person required to deduct, account for, and pay income tax withheld who fails to collect, truthfully account for, and pay over income tax withheld, will be liable for a penalty equal to the total of tax not collected, accounted for, and paid as well as any interest due on the tax (see Tax Law section 685(g)). More than one person may be liable as an employer or responsible person for withholding income tax.

A responsible person may be an individual, corporation, partnership or limited liability company (LLC), or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member or employee of an LLC, who as such officer, employee, manager, or member has a duty to deduct, account for, and pay over income tax withheld.

E. Income subject to withholding

Compensation that is regarded as wages for federal income tax withholding purposes, including tips, supplemental unemployment compensation benefits, deferred compensation, and nonstatutory stock options, is generally regarded as wages for purposes of withholding New York State income tax, New York City resident tax, Yonkers resident tax surcharge, and Yonkers nonresident earnings tax unless an allocation or exception is specifically required or provided for New York State, New York City, or Yonkers purposes.

With the exception of certain annuity payments, income that is reported on federal Forms 1099 is not subject to New York State withholding tax and there are no provisions in the Tax Law for such withholding. Pension and annuity income reported on federal Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, is subject to withholding if the annuitant requests New York State, New York City, or Yonkers withholding by filing Form IT-2104-P, *Annuitant's Request for Income Tax Withholding*, with the payer. For more information on income tax withholding on annuities, see part P, *Determining withholding tax*, on page 30, and the instructions for Form IT-2104-P.

Employers of household help — Withholding income tax from wages paid to household employees is **voluntary** on your part. If you and your employee voluntarily agree, you may withhold for New York State income tax, New York City resident tax, Yonkers resident tax surcharge, or Yonkers nonresident earnings tax, whichever may apply. For more information about your wage reporting and withholding responsibilities, see section 2, part D, *Employers of household help* on page 24, and New York State bulletin TB-MU-350, *Hiring Household Help*.

F. New York State resident employees

All wages paid to a resident of New York State are subject to withholding, even when earned outside New York State. See part P, *Determining withholding tax*, on page 30, for an explanation of how to determine withholding.

If wages paid to New York State residents are also subject to withholding of income taxes of other states, their political subdivisions, or the District of Columbia, see part P, *Determining withholding tax*, on page 30, for instructions on how to avoid double withholding.

Note: Employers must continue to withhold New York State income tax from resident employees regardless of work location or length of assignment outside of New York State. However, an employer may accept a completed Form IT-2104.1, *New York State, City of New York, and City of Yonkers Certificate of Nonresidence and Allocation of Withholding Tax*, as documentation of an employee's nonresident status, as long as the employer does not have any actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K on page 28.

G. New York City resident employees

All wages paid to a New York City resident are subject to personal income tax withholding even though the services may have been performed outside New York City.

Individuals who reside in the following counties are subject to New York City resident income tax: Kings County (Brooklyn), Bronx County, New York County (Manhattan), Richmond County (Staten Island), and Queens County. Certain mailing addresses in Queens (ZIP codes starting with 110) and the Bronx (ZIP code 10803) may actually be part of Nassau or Westchester County. Employers may use the Tax Department's *Jurisdiction/Rate Lookup by address* to determine if an employee's address is a New York City address for the purposes of withholding New York City resident income tax by visiting our Web site at *www.tax.ny.gov*. See part P, *Determining withholding tax*, on page 30, for an explanation of how to determine withholding.

Note: The Yonkers resident tax rate is now 16.75%.

Note: Employers must continue to withhold New York City income tax from resident employees regardless of work location or length of assignment outside of New York City. However, an employer may accept a completed Form IT-2104.1, as documentation of an employee's nonresident status, as long as the employer does not have any actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K on page 28.

H. Yonkers resident employees

All wages paid to a Yonkers resident are subject to personal income tax withholding even though the services may have been performed outside Yonkers.

Individuals who reside in Yonkers and certain areas of Bronxville, Scarsdale, and Tuckahoe are subject to Yonkers resident income tax withholding. Employers may use the Tax Department's *Jurisdiction/Rate Lookup by address* to determine if an employee's address is in the city of Yonkers for the purposes of withholding Yonkers resident income tax by visiting our Web site (see *Need help?* on page 45).

The Yonkers resident tax is equal to ~~15%~~ 16.75% of the New York State tax. You may figure the Yonkers withholding amount by simply multiplying the New York State withholding amount by ~~15% (0.15)~~ 16.75% (.1675), rather than using the other methods explained in part P, *Determining withholding tax*, on page 30.

Note: Employers must continue to withhold Yonkers income tax from resident employees regardless of work location or length of assignment outside of Yonkers. However, an employer may accept a completed Form IT-2104.1, as documentation of an employee's nonresident status, as long as the employer does not have any actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K on page 28.

I. New York State nonresident employees

The instructions in this part apply only to state withholding on wages paid to nonresidents of New York State. See part J, *Yonkers nonresident employees*, below for withholding of Yonkers tax on Yonkers nonresidents.

New York State personal income tax must be deducted and withheld on wages paid to New York State nonresident employees for services performed in New York State. Accordingly, if a New York State nonresident employee performs all services in New York State, the tax must be withheld from all wages paid to the employee in accordance with the employee's withholding allowance certificate and the applicable withholding methods as shown in Publication NYS-50-T-NYS, *New York State Withholding Tax Tables and Methods*.

If a New York State nonresident employee performs services partly in the state, only wages for services inside the state are subject to withholding of New York State personal income tax. The amount of wages allocable to New York State is that part of the total compensation that the number of days worked in New York State bears to the total number of days worked both in and out of New York State, exclusive of nonworking days, normally considered to be Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay. However, to figure the earnings of traveling salespersons or other employees whose compensation depends entirely on the volume of business transacted by them, the amount allocable to New York State is that part of the compensation received that the volume of business transacted by them in New York State bears to the total volume of business transacted by them both in and out of New York State. (See part Y, *Statements for employees and annuitants*, on page 33, and TSB-M-02(3)I, *Employer Requirements Concerning the Reporting of New York State, City of New York, and City of Yonkers Wages Beginning with Tax Year 2003*, for the requirement to report New York State and local wages on federal Form W-2, *Wage and Tax Statement*.)

The portion of wages allocable to New York State may be determined by you on the basis of the preceding year, except that you must make any necessary adjustments during the year to ensure that the required amount of New York State personal income tax is withheld for the current year.

If the employee reasonably expects that the preceding year's experience will not apply to the current year, the employee may furnish you with a statement on Form IT-2104.1, estimating the part of wages allocable to New York State, or you may make such an estimate and withhold on that basis. In either case, however, you are required to make the necessary adjustments during the year so that the proper amount of New York State personal income tax is withheld from the employee's salary for the current year.

You are required to withhold on all wages paid to a New York State nonresident who works partly inside and partly outside New York State unless Form IT-2104.1 is filed with you, or you maintain adequate current records to determine the correct amount of wages from New York State sources.

If you pay wages to nonresident employees whose primary work location is outside of New York State and who are expected to work 14 days or fewer in New York State during the calendar year, see TSB-M-12(5)I, *Withholding on Wages Paid to Certain Nonresidents Who Work 14 Days or Fewer in New York State,* for the Tax Department's existing policy concerning employer withholding on wages paid to those employees.

Note: An employer may accept a completed Form IT-2104.1 as documentation of an employee's nonresident status, as long as the employer does not have any actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K on page 28.

In situations where a nonresident or part-year resident employee whose assigned or primary work location is in New York State performs services for an employer at that location and at a home office located outside of New York State, see TSB-M-06(5)I, *New York Tax Treatment of Nonresidents and Part-Year Residents Application of the* Convenience of the Employer *Test to Telecommuters and Others*.

J. Yonkers nonresident employees

Services performed in Yonkers by a nonresident of Yonkers

An employee who is not a Yonkers resident but performs services for you in Yonkers must complete and give you Form IT-2104.1, certifying Yonkers nonresidency.

The Yonkers nonresident earnings tax is withheld on wages paid to Yonkers nonresident employees for services performed in Yonkers. If a city nonresident employee performs services entirely in Yonkers, the tax must be withheld from all wages in accordance with the tables that apply to Yonkers nonresidents.

Services performed partly in Yonkers

If a Yonkers nonresident employee performs services partly in Yonkers, only wages for services inside Yonkers are subject to withholding. The amount of wages allocable to Yonkers is that part of the total compensation that the total number of days worked in Yonkers bears to the total number of days worked both in and out of Yonkers, exclusive of nonworking days, normally considered to be Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay. However, to figure the earnings of a traveling salesperson or other employee whose compensation depends entirely on the volume of business transacted, the amount allocable to Yonkers is that part of the compensation received that the volume of business transacted in Yonkers bears to the total volume of business transacted both in and out of Yonkers.

The portion of wages allocable to Yonkers may be determined by you on the basis of the preceding year except that you must make any necessary adjustments during the year to ensure that the required amount of Yonkers tax is withheld for the current year.

If the employee reasonably expects that the preceding year's experience will not apply to the current year, the employee may furnish you with Form IT-2104.1 estimating the wages allocable to Yonkers, or you may make such an estimate and withhold on that basis. In either case, however, you are required to make the necessary adjustments during the year so that the proper amount is withheld for the current year.

You are required to withhold on all wages paid to a Yonkers nonresident who works partly in Yonkers unless Form IT-2104.1 is completed by the employee, or you maintain adequate current records to determine the correct amount of wages from Yonkers sources.

Note: An employer may accept a completed Form IT-2104.1 as documentation of an employee's nonresident status, as long as the employer does not have any actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K below.

Earnings within Yonkers of less than $3,000

If a Yonkers nonresident employee will work only a short period within Yonkers and it is reasonably expected that the total wages for services performed within Yonkers for the taxable year will not exceed $3,000 (or $3,000, prorated for taxable periods of less than one year), you need not withhold or deduct any amount from the employee's wages, and Form IT-2104.1 need not be filed by the employee.

K. Form IT-2104.1, *New York State, City of New York, and City of Yonkers Certificate of Nonresidence and Allocation of Withholding Tax*

Form IT-2104.1 is for use by nonresident employees to certify to the employer that the employee is not a resident of New York State, New York City, or Yonkers, and to estimate the percentage of the employee's wages and other compensation subject to federal income tax withholding, including salaries, vacation allowances, bonuses, commissions, fringe benefits, and deferred compensation, or compensation from nonstatutory stock options attributable to services performed in New York State. An employer may not accept a Form IT-2104.1 that claims zero percent allocation if any part of the employee's wages or other compensation is attributable to services performed in New York State or Yonkers.

An employer may rely on a Form IT-2104.1 submitted by an employee, as long as the employer does not have actual knowledge or reason to know that the Form IT-2104.1 is or has become incorrect or unreliable. If an employer has actual knowledge or reason to know that the Form IT-2104.1 is or has become incorrect or unreliable, the employer should re-determine the proper amount of withholding using the rules described in this publication for resident and nonresident employees.

Actual knowledge or reason to know means the knowledge of relevant facts or statements contained in Form IT-2104.1 is such that a reasonably prudent person in the position of the employer would question the claim(s) made on the form. For example, an employer would be deemed to have actual knowledge or reason to know that Form IT-2104.1 has become incorrect if there had been a significant change in the employee's work assignment, or the employee gives the employer information which indicates the employee has become a New York State resident. Significant changes in work assignment include, but are not limited to: promotions, change of primary work location (either permanent or for a significant temporary period) and a change in duties. The actual knowledge or reason to know standard does not require that an employer make adjustments based on the day-to-day activity of the employee. The standard does, however, require that an employer stop relying on a Form IT-2104.1 if there has been a significant change to the employee's work assignment.

In addition, if **any** part of the employee's deferred compensation or compensation from nonstatutory stock options is attributable to services performed in New York State or Yonkers in the current year or in a previous year or years, the employer may not accept a Form IT-2104.1 that claims zero percent allocation. For more information on withholding from deferred compensation and nonstatutory stock options, see part L, *Deferred compensation and compensation from nonstatutory stock options*, below.

New York State, New York City, and Yonkers income tax withholding will be deducted in accordance with the employee's federal Form W-4, *Employee's Withholding Allowance Certificate*, New York State Form IT-2104, *Employee's Withholding Allowance Certificate*, Form IT-2104.1 (if applicable), and the withholding tables and methods.

L. Deferred compensation and compensation from nonstatutory stock options

New York State resident employees

All deferred compensation and compensation attributable to nonstatutory stock options **that are considered wages for federal income tax purposes** are subject to withholding, even if the compensation is attributable to services performed outside of New York State. This rule also applies to New York City and Yonkers resident income tax withholding if the employee is also a resident of New York City or Yonkers, and Yonkers nonresident earnings tax if the compensation is attributable to services performed in Yonkers.

New York State nonresident employees

Deferred compensation and compensation attributable to nonstatutory stock options **that are considered wages for federal income tax purposes** are subject to withholding if the compensation is attributable to services performed in New York State. This rule also applies to Yonkers nonresident income tax withholding if the compensation is attributable to services performed in Yonkers.

See TSB-M-07(7)I, *New York State Tax Treatment of Stock Options, Restricted Stock, and Stock Appreciation Rights Received by Nonresidents and Part-Year Residents*, for more information on compensation attributable to nonstatutory stock options.

Employer's responsibility for withholding

The Tax Law requires that employers withhold from their employees, so far as practicable, an amount substantially equivalent to the tax reasonably estimated to be due from the inclusion of the wages in the employees' New York adjusted gross income or New York source income (Tax Law section 671(a)(1)).

Note: Payments or distributions from deferred compensation plans that are not considered wages for federal income tax purposes and are reported on federal Form(s) 1099 are not subject to income tax withholding for New York State, New York City, or Yonkers income tax purposes, unless the payee requests withholding by filing Form IT-2104-P.

The Tax Department's policy concerning the withholding requirements for employers who paid deferred compensation or compensation from nonstatutory stock options to a nonresident employee that performed services both inside and outside New York State during the compensable period is explained below. The requirements described in this section apply to compensation that is considered wages for federal income tax withholding purposes:

- compensation earned in one year and paid in a later year (deferred compensation), or
- compensation from nonstatutory stock options.

The policy addresses what factors and statements an employer should consider in determining what the reasonable estimate of tax due should be.

Employers are required to withhold on 100% of the deferred compensation and compensation from nonstatutory stock options if any part of the compensation is attributable to services performed in New York State, unless one of the following applies:

1. Form IT-2104.1 is filed with the employer by the employee for the deferred compensation or compensation from nonstatutory stock options reflecting the proper allocation for the income.
2. The employer has a Form IT-2104.1 on record for the employee for the current year, and the employee is still being paid compensation for services currently being performed in New York State and the deferred compensation or compensation from nonstatutory stock options is less than $1,000,000 for the payroll period. In this case, the employer may withhold using the employee's estimated percentage of services performed for the current year.
3. The employee is no longer performing services in New York State or is no longer employed by the employer, and the deferred compensation or compensation from nonstatutory stock options is less than $1,000,000 for the payroll period. In this case, the employer may withhold using the employee's estimated percentage of services contained on the last Form IT-2104.1 submitted by the employee, on which the employee estimated a percentage of services performed in New York State of greater than zero percent. (A prior Form IT-2104.1 submitted pursuant to (1) above for the specific purpose of withholding on deferred compensation or compensation from nonstatutory stock options will not be considered the last Form IT-2104.1 on file.)
4. The employer has adequate records to determine the correct amount of wages or other compensation attributable to services performed in New York State or Yonkers. In this case, the employer may compute the withholding based on that amount. The employer must maintain

a record of how it computed the percentage of compensation subject to New York State withholding. Adequate records include, but are not limited to, Form(s) IT-2104.1 on file for the entire compensable period.

For purposes of (1) through (4) above, an employer may rely on a Form IT-2104.1 submitted by an employee, provided the employer does not have actual knowledge or reason to know the certificate is incorrect or unreliable. For more information on Form IT-2104.1, see part K on page 28.

M. Supplemental wage payments

Supplemental wages are compensation paid in addition to an employee's regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay and retroactive pay increases for current employees, and nondeductible moving expenses. Other payments subject to the supplemental wage rules include taxable fringe benefits and expense allowances paid under a nonaccountable plan. Also see federal Publication 15, Circular E, for a list of other payments that may be considered supplemental wages.

How you withhold on supplemental payments depends on whether the supplemental payment is identified as a separate payment from regular wages.

Supplemental wages combined with regular wages

If you pay supplemental wages with regular wages but do not specify the amount of each, withhold income tax as if the total were a single payment for a regular payroll period.

Example 1: *You pay Jim Parks a base salary on the first of each month. He is single, lives and works in Albany, and claims one withholding allowance. In January of 2013, you pay him $1,000. Using the wage bracket tables, you withhold $13.60 from this amount. In February 2013, you pay him $1,000 plus a commission of $1,500, which you combine with regular wages and do not specify the amount of each payment. You figure the withholding based on the total of $2,500. The correct withholding from the wage bracket tables is $90.30.*

Supplemental wages identified separately from regular wages

If you pay supplemental wages separately (or combine them in a single payment and specify the amount of each), the income tax withholding method depends partly on whether or not you withhold income tax from your employee's regular wages:

- If you **withheld** income tax from an employee's regular wages, you can use one of the following methods for the **supplemental wages**:
  a. Withhold at the supplemental rates; see Publication NYS-50-T-NYS, Publication NYS-50-T-NYC, and Publication NYS-50-T-Y (whichever apply) for the supplemental rates.
  b. Add the supplemental and regular wages for the most recent payroll period this year. Then figure the income tax withholding as if the total were a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.
- If you **did not withhold** income tax from the employee's regular wages, use method **b**. (This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.)

Example 2: *You pay Susan Williams a base salary on the first of each month. She is single, lives and works in Rochester, and claims one allowance. Her May 1, 2013, pay is $1,500. Using the wage bracket tables, you withhold $33.50. On May 14, 2013, you pay her a bonus of $750. Electing to use supplemental payment method **b,** you:*

1. *Add the bonus amount to the amount of wages from the most recent pay date ($750 + $1,500 = $2,250).*
2. *Determine the amount of withholding on the combined $2,250 amount to be $75.50 using the wage bracket tables.*
3. *Subtract the amount withheld from wages on the most recent pay date from the combined withholding amount ($75.50 - $33.50 = $42.00).*
4. *Withhold $42.00 from the bonus payment.*

Example 3: *The facts are the same as in Example 2, except that you elect to use the 2013 supplemental rate for withholding on the bonus. You withhold 9.62% of $750, or $72.15, from Susan's bonus payment.*

N. Taxation of employees of interstate carriers as well as seamen engaged in all types of trade

Interstate rail, motor, and motor private carriers

Because of the provisions of federal law, compensation paid by an interstate rail, motor, or motor private carrier to an employee who performs regularly assigned duties in two or more states is subject to state and local income taxes only in the employee's state of residence.

Resident — An employer who is an interstate rail, motor, or motor private carrier must withhold New York State (and New York City or Yonkers, if applicable) income tax on the entire amount of compensation paid to an employee who is a New York State resident.

Nonresident — If an employee of one of the above carriers is a nonresident for income tax purposes and is paid compensation for regularly assigned duties performed in New York State and one or more other states, the compensation is not considered to be income derived from New York State (and New York City or Yonkers, if applicable) sources and is not subject to state or city taxes, even though the employee performed services in New York State.

An employer who is an interstate rail, motor, or motor private carrier should not withhold New York State, New York City, or Yonkers taxes on compensation paid to employees who are New York State nonresidents who perform their regularly assigned duties in New York State and one or more other states.

However, a nonresident employee of an interstate rail, motor, or motor private carrier may request New York State, New York City, or Yonkers withholding. See part R, *Voluntary withholding agreements*, on page 30.

Interstate air carriers

Resident — Compensation paid to a New York State resident who is an employee of an interstate air carrier is subject to New York State personal income tax. An employer who is an interstate air carrier must withhold New York State (and New York City or Yonkers, if applicable) income tax.

Nonresident — Compensation paid to a nonresident of New York State who is an employee of an interstate air carrier is subject to New York State personal income tax only if more than 50% of the employee's compensation is earned within New York State. An employer who is an interstate air carrier must withhold New York State (and New York City or Yonkers, if applicable) income tax on an employee's compensation if more than 50% is earned within New York State. Since an employee of an interstate air carrier who earns 50% or less of his or her compensation within New York State is not subject to New York State personal income tax, he or she is not subject to withholding.

More than 50% of the employee's compensation is considered earned in New York State (and New York City or Yonkers, if applicable) if the employee's scheduled flight time in New York for the calendar year is more than 50% of the employee's total scheduled flight time for the calendar year.

A nonresident employee of an interstate air carrier may request New York State, New York City, or Yonkers withholding. See part R, *Voluntary withholding agreements*, on page 30.

Withholding requirements for seamen

New York State, New York City, and Yonkers income taxes may not be withheld from compensation paid to seamen engaged in foreign, coastwise, intercoastal, interstate or noncontiguous trade, or an individual employed on any fishing vessel or fish processing vessel.

However, seamen may request New York State, New York City, or Yonkers withholding, regardless of their resident status. See part R, *Voluntary withholding agreements*, on page 30.

O. Nonresident alien employees entitled to tax treaty benefits

In accordance with Internal Revenue Service (IRS) guidelines, a nonresident alien employee who claims an exemption from tax under a provision of a federal income tax treaty must file federal Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, with the employer to claim a tax treaty exemption from withholding.

A nonresident alien employee who claims exemption from tax in accordance with IRS guidelines is not required to provide any additional documentation to claim exemption from New York State, New York City, and Yonkers income taxes. An employer may accept Form 8233 submitted under federal guidelines. The employer is not required to submit federal Form 8233 to New York State but should maintain a copy of the statement submitted with the employee's records available for review by the Tax Department. For more information on nonresident aliens and federal tax treaties, see federal Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, Publication 519, *U.S. Tax Guide for Aliens*, and the instructions for federal Form 8233.

P. Determining withholding tax

The New York State income tax, New York City resident tax, Yonkers resident tax surcharge, and Yonkers nonresident earnings tax to be withheld by you must be determined using the approved withholding tables or other methods based on the withholding allowances of the employee. (In special situations, you may apply to the Tax Department for permission to use another method.) A written agreement may be made between you and your employee to have additional amounts of tax withheld (see *Additional withholding requested on Form IT-2104* below for details). For more information on the computation of withholding tax for New York State, New York City, or Yonkers, see pages 26 through 28.

In addition to withholding New York State tax, you may also be required to withhold income tax from wages paid to a New York State resident pursuant to the laws of other states, their political subdivisions, or the District of Columbia.

To avoid double withholding, the amount of New York State income tax that would otherwise be required to be withheld from wages paid to a New York State resident should be reduced by the amount of income tax required to be withheld pursuant to the laws of other states, their political subdivisions, or the District of Columbia. This applies to withholding of New York State tax on residents only.

Additional withholding requested on Form IT-2104

An additional withholding amount may be requested for New York State, New York City, or Yonkers (or any combination of these), by an employee/payee trying to avoid underwithholding. The employee/payee makes the request by entering a specific dollar amount on lines 3, 4 and/or 5 of his or her Form IT-2104. If you agree to withhold an additional amount, figure the amount that you would have withheld based on the number of exemptions claimed, then add the additional amount requested to this figure. Withhold the total amount from wages.

Income tax withholding from annuities

If an annuitant files Form IT-2104-P, with the payer, the payer must withhold the amount specified, provided that the New York State tax withheld is not less than $5 per month, and if applicable, New York City or Yonkers tax withheld is not less than $5 per month, and does not reduce the annuity payment to less than $10.

To qualify for withholding, the annuity or pension payment must be income to the recipient that would be includable in his or her New York adjusted gross income. The annuity or pension must also be payable over a period longer than one year. The request for withholding will remain in effect until terminated in writing by the payee.

A payer of annuities will be subject to the same remitting and reporting requirements as employers if a payee has requested withholding for New York State, New York City, or Yonkers income tax.

Pension and annuity income (reported on federal Form 1099-R) must be reported as *Other wages* on Form NYS-45-ATT, *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return - Attachment*, if the payer withholds New York State, New York City, or Yonkers income taxes from the distribution(s).

Q. Employee's withholding allowance certificate

In determining the tax to be deducted and withheld, you may allow the same number of withholding allowances for New York State, New York City, and Yonkers purposes as the number the employee claimed on federal Form W-4. However, certain allowances for the employee and his or her spouse permitted on federal Form W-4 are not allowed on Form IT-2104. Therefore, to ensure greater accuracy in withholding amounts, all employees should complete and give you a New York State Form IT-2104 and Form IT-2104.1, if applicable.

If an employee has claimed one or more withholding allowances on federal Form W-4 that are based on federal tax credits, he or she must complete a New York Form IT-2104 omitting those allowances for federal tax credits. The employee may instead be entitled to claim additional withholding allowances for certain New York State tax credits and deductions (see Form IT-2104).

If an individual and his or her spouse both work, each spouse should file a separate Form IT-2104 with his or her employer. Each spouse should mark the box *Married, but withhold at higher single rate* on the front of Form IT-2104, and divide the total number of allowances between the spouses. Their total withholding will better match their final tax if the higher-wage-earning spouse claims all of the couple's allowances and the lower-wage-earning spouse claims zero allowances.

If an employee has not filed federal Form W-4 or wishes to claim allowances other than those claimed for federal withholding tax purposes, the employee must complete and give Form IT-2104 to his or her employer.

If you receive notification from the IRS that a federal Form W-4 for an employee is defective, the number of exemptions allowed for New York withholding purposes is limited to the number of withholding exemptions specified in the IRS notice, less the number of withholding exemptions allowed for federal credits, plus the number of additional New York withholding allowances that the employee is entitled to (and that is claimed on a properly completed Form IT-2104).

If the federal change to federal Form W-4 affects the allowances claimed on a Form IT-2104 that is on file with the employer, the employee should complete and submit to his or her employer, a new Form IT-2104 reflecting the corrected number of allowable exemptions.

If at any time an employee claims more than 14 allowances on Form IT-2104, see part T, *Submitting certificates to the Tax Department*, on page 31.

R. Voluntary withholding agreements

An employee and employer may enter into an agreement to provide for withholding on payments for services not considered wages as defined in part E, *Income subject to withholding*, on page 26, and compensation described in part N, *Taxation of employees of interstate carriers as well as seamen engaged in all types of trade*, on page 29. The employer and employee must agree to the withholding, subject to termination on written notice by either party. The furnishing of Form IT-2104, constitutes a request for withholding. If the employee is subject to withholding on the payment of wages by his or her employer, the employee may also enter into an agreement with his or her employer for withholding on payments for services not considered wages by furnishing the employer with a written request containing his or her name, address, social security number, statement that he or she desires withholding and the duration of the withholding. There is no provision in New York State Tax Law for withholding on individuals who are self-employed (independent contractors).

S. Certificate of exemption from withholding

Exemption from withholding of New York State, New York City, and Yonkers resident taxes is available for employees who meet the requirements of section 671(a)(3) of the Tax Law, or who qualify as a military spouse exempt from New York State income tax under the Servicemembers Civil Relief Act (SCRA), as amended by the Military Spouses Residency Relief Act.

Tax Law section 671(a)(3) exempts employees under age 18 or over age 65, or **full-time** students under age 25, who had no New York income tax liability in their previous taxable year and expect none in the current year. See Form IT-2104-E, *Certificate of Exemption from Withholding*, for details.

Under the **Servicemembers Civil Relief Act (SCRA)**, as amended by the Military Spouses Residency Relief Act, an employee may be exempt from New York State income tax (and New York City and Yonkers personal income tax, if applicable) on their wages if: (1) the employee's spouse is a member of the armed forces present in New York in compliance with military orders; (2) the employee is present in New York solely to be with their spouse; and (3) the employee is domiciled in another state.

If an employee qualifies for exemption from withholding, he or she must complete and give Form IT-2104-E to his or her employer, certifying the employee's exemption under the provisions of section 671(a)(3) of the Tax Law, or under the SCRA.

Employees must file Form IT-2104-E annually if they wish to continue the exemption. Under certain circumstances, the exemption from withholding is required to be revoked by the employer or employee. These conditions are listed on Form IT-2104-E.

If an employee who claims exemption on Form IT-2104-E usually earns more than $200 per week, you must send to the Tax Department a copy of the Form IT-2104-E certificate along with a copy of any written statement received from the employee that supports the claims made on the certificate. See part T, *Submitting certificates to the Tax Department*, below.

Note: A federal Form W-4, that claims exemption from withholding for federal purposes, is **not** valid for exemption from withholding of New York State, New York City, or Yonkers withholding tax.

T. Submitting certificates to the Tax Department

If an employee claims more than 14 allowances, you are required to send a copy of that employee's Form IT-2104 to the Tax Department. Also, if an employee who claims exemption from withholding on Form IT-2104-E usually earns more than $200 per week, you must send in a copy of that employee's Form IT-2104-E. Send a copy of the employee's Form IT-2104 or Form IT-2104-E to: NYS Tax Department, Income Tax Audit Administrator, Withholding Certificate Coordinator, W A Harriman Campus, Albany NY 12227-0125.

The Tax Department will review these certificates and notify you of any adjustments that must be made to either the filing status or number of withholding allowances permitted, or both. Any *Withholding Allowance Adjustment Notice* issued by the Tax Department regarding an employee's New York State (and New York City or Yonkers, if applicable) withholding must be used as the basis for withholding and cannot be changed without written notice from the Tax Department.

If you receive a *Withholding Allowance Adjustment Notice* for an employee and the employee then wishes to complete a new Form IT-2104 or Form IT-2104-E, claiming a different filing status or a number of allowances higher than the adjustment notice allows, do not accept the new form or make any changes. Instruct the employee to forward the new Form IT-2104 or IT-2104-E, along with a statement explaining why the new allowances should be accepted, and a copy of the original *Withholding Allowance Adjustment Notice* to the above address. The Tax Department will determine whether to accept the new certificate and will notify you in writing if you can accept the new Form IT-2104 or IT-2104-E.

Due dates for sending new certificates received from employees claiming more than 14 allowances, or claiming exemption from withholding where earnings are more than $200 per week, are as follows:

Quarter	Due date
January through March	April 30
April through June	July 31
July through September	October 31
October through December	January 31

U. Payment of New York State, New York City, and Yonkers taxes withheld

Filing requirements

Every employer paying wages or other payments subject to income tax withholding must file a return and pay the New York State, New York City, and Yonkers taxes required to be withheld.

If you are required to withhold $700 or more during a calendar quarter, you must use Form NYS-1, *Return of Tax Withheld*, to remit the accumulated tax withheld of $700 or more to the Tax Department. If you are required to withhold less than $700 during a calendar quarter, you should remit the total tax withheld with your Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*, filed with the Tax Department for that calendar quarter. For more detailed information, see the instructions for Forms NYS-1 and NYS-45.

Payment filing frequency

You must file Form NYS-1 and remit the total tax withheld after each payroll or distribution that causes the total accumulated tax required to be withheld to equal or exceed $700. If you have **more than one payroll within a week (Sunday through Saturday), you are not required to file until after the last payroll** in the week. However, when a calendar quarter ends between payrolls paid within a week, any accumulated tax required to be withheld of at least $700 must be remitted with Form NYS-1 after the last payroll in the quarter.

If you have filed at least once during the calendar quarter, and have an unremitted balance of tax withheld that is less than $700 after the last payroll of the quarter, you may remit this amount with your quarterly return Form NYS-45 instead of with a Form NYS-1 (see the instructions for Form NYS-45).

When returns are due

Form NYS-1 filing due dates are based on amounts withheld in prior years. If you were required to withhold $15,000 or more for the calendar year that precedes the previous calendar year, you must file Form NYS-1 and remit the tax you withheld within three business days following the payroll that caused the total accumulated tax withheld to equal or exceed $700. If you were required to withhold less than $15,000 during such year, you must file Form NYS-1 and remit the tax withheld within five business days.

If you are a higher education organization or a health care provider (as defined in Tax Law section 9), you are eligible to file Form NYS-1 and remit the tax withheld within five business days of the payroll in which the tax withheld equals or exceeds $700, regardless of the previous amounts withheld.

The Tax Department will notify you of any change to your filing due date (three or five business days after the payroll) based on our record of your total tax withheld.

New employers will be permitted to file and make payment of taxes withheld within five business days until notified otherwise by the Tax Department.

When the due date falls on a Saturday, Sunday, or legal holiday (see page 37), you are permitted to file on the next business day.

Form NYS-45 is due the last day of the month following the end of the quarter as follows:

Quarter	Due date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

When the due date falls on a Saturday, Sunday, or legal holiday (see page 37), you are permitted to file on the next business day.

If you permanently cease paying wages, a final Form NYS-45 must be filed within 30 days of the date on which you permanently ceased paying wages.

Note: There are no provisions in New York State Tax Law for extensions of time to file withholding tax information.

Mergers, acquisitions, and successor information

If you are closing your New York business or if your out-of-state company will no longer conduct business in New York, you must file a final Form NYS-45, if you had employees and have ceased paying wages. You must file your final return within 30 days of the date you ceased paying wages. In completing your final Form NYS-45, you must

provide the date you ceased paying wages and whether or not you sold or transferred all or part of your business and if so, to whom you sold it.

If you acquire all or part of an existing business, most licenses and registrations held by the previous owner cannot be transferred to you, including any federal or state identification numbers. You may register for participation in the New York State withholding tax, wage reporting, and unemployment insurance program online or by completing Form NYS-100, *New York State Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting*. For more information about online registration, or to download Form NYS-100, see the Tax Department's Web site.

Federal audit changes

If the IRS makes a change to an amount you are required to report as wages, or deduct and withhold from wages for federal income tax purposes, you must report this change to the New York State Tax Department within 90 days after the final federal determination of the change.

If you have federal audit changes to report and you **did not previously file** a Form NYS-45 for the period(s) covered by the federal audit, report the federal audit changes on Form NYS-45 (and Form(s) NYS-45-ATT, if applicable). If you are reporting federal audit changes to correct withholding tax or wage reporting information on a **previously-filed** Form NYS-45 or Form NYS-45-X, *Amended Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*, report the federal audit changes on Form NYS-45-X (and Form(s) NYS-45-ATT, if applicable).

You must attach a copy of the final federal determination to your Form NYS-45 or NYS-45-X.

Employees without social security numbers

When completing Form NYS-45 or Form NYS-45-ATT, you must use the social security number shown on the employee's or payee's social security card. If the employee or payee does not have a social security card, he or she should apply for one by completing federal Form SS-5, *Application for a Social Security Card*.

If the employee or payee had applied for a social security card but did not receive the card in time for filing, enter ***Applied for*** in Part C, column a on paper Form NYS-45 or Form NYS-45-ATT. Enter nine zeros if you are filing Form NYS-45 or Form NYS-45-ATT electronically.

Ask the employee or payee to inform you of the number and name as they are shown on the social security card when it is received. Then correct your previous report by filing Form NYS-45-X or Form NYS-45-ATT showing the employee's or payee's SSN. See the instructions for Form NYS-45-X for more information.

Employers cannot accept an IRS issued Individual Taxpayer Identification Number (ITIN) in place of a social security number (SSN) for employee identification or for work. An ITIN is a tax processing number issued by the IRS. An ITIN is only available to resident and nonresident aliens who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, an SSN from the Social Security Administration (SSA). An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN.

An ITIN is a 9-digit number beginning with the number *9*. For a complete list of ranges of numbers for ITINs, see the IRS Web site *(at www.irs.gov)*.

V. Seasonal employers

The category of *seasonal employer* was created to provide relief from the requirement that all employers file quarterly combined withholding, wage reporting and unemployment insurance returns whether or not they have any business activity to report. The Tax Department treats seasonal employers differently from other employers. Seasonal employers do not have to file returns for quarters for which they have no wage reporting, withholding, and unemployment insurance obligations. However, a seasonal employer must file at least one quarterly return for each calendar year to maintain seasonal status.

There is a checkbox for seasonal employers on Form NYS-45. To alert New York State that you will not have to file a return for one or more quarters during the year, you must mark an ***X*** in this box on each and every quarterly return (Form NYS-45) that you file. By marking this box, you are certifying that because of the seasonal nature of your business, there is at least one quarter of the calendar year in which you do not make any wage payments subject to both New York State income tax withholding and New York State unemployment insurance contributions. (Since wage reporting uses unemployment insurance definitions, there would likewise be no wage reporting requirement if no unemployment insurance liability was incurred.) Remember, you must mark the seasonal employer box on **every** quarterly return you file. Otherwise, the Tax Department will expect a return to be filed for each quarter. If you do not mark this box on every return filed, you will lose your seasonal employer status and may be subject to penalties if a quarterly return is required but not filed for any subsequent calendar quarter.

If you will not employ anyone for the remainder of the calendar year and **you are reporting five or fewer employees**, you must: (1) complete Form NYS-45, Part C, all columns, including d and e to report the employees' annual wages and withholding (as if it were the final quarter of the calendar year); or (2) report the employees' annual wage and withholding totals on the Form NYS-45 filed for the last quarter of the calendar year.

If you will not employ anyone for the remainder of the calendar year and **you are reporting more than five employees**, make no entries in Part C. You must (1) report all employees on Form NYS-45-ATT, all columns, including d and e to report the employees' annual wages and withholding (as if it were the final quarter of the calendar year); or (2) report all employees' annual wage and withholding totals on the Form NYS-45-ATT filed for the last quarter of the calendar year.

When you are filing your final return for the calendar year, be sure to provide the "year-end" information requested, including every column of employee information.

Overpayments and Overcollections — If a seasonal employer has correctly withheld from his or her employee but has made an overpayment of withholding to New York State, or has collected and paid over to New York State more than the amount required to be withheld from the employee's wages, the seasonal employer may have the overpayment refunded only. It may not be carried forward to a subsequent calendar quarter.

W. Correcting mistakes in withholding from the employee

Any mistakes that result in undercollections or overcollections that are not corrected by the time all of the Forms NYS-45 are filed for the calendar year should be corrected when the **employee** files his or her New York State personal income tax return. However, the employer may still be responsible for any interest, penalties, or additions to tax.

Undercollections

If less than the correct amount of New York State, New York City (if applicable), and Yonkers (if applicable) income tax is deducted from any wage payment made to an employee, the employer is allowed to deduct the amount of the undercollection from later wage payments made to the employee in the same calendar year.

However, the employer is responsible for any underpayment of New York State, New York City (if applicable), and Yonkers (if applicable) personal income tax. Reimbursement by the employee is a matter to be resolved between the employer and employee.

Even if the employee pays any tax due with his or her New York State personal income tax return filed for the same calendar year, the employer may still be subject to penalties, interest, and additions to tax for failure to deduct and withhold. If you discover an undercollection, you must make the appropriate correction indicated below.

- **Undercollection discovered prior to filing Form NYS-45 for the same calendar quarter**

  If you had previously filed Form(s) NYS-1 during the calendar quarter to pay income tax withheld and you have not yet filed Form NYS-45 for the quarter, you must correct the underpayment by making an additional payment with Form NYS-1 before the end of the calendar quarter (see Form NYS-1-I, *Instructions for Form NYS-1);* or

  If you did not file any Form(s) NYS-1 because you did not accumulate at least $700 in withholding (New York State, New York City, and Yonkers) and you have not yet filed Form NYS-45 for the quarter, you must correct the undercollection by including the amount of the undercollection as income tax withheld on lines 12 through 15 of

Form NYS-45 and remitting the total amount required to be withheld with the quarterly return.

- **Undercollection discovered in a subsequent calendar quarter**

  If you discover an undercollection after the calendar quarter in which it occurred, but prior to filing Form NYS-45 for the final quarter of the same calendar year, you must file an amended quarterly return on Form NYS-45-X for the quarter in which the underpayment occurred. (For more information, see Form NYS-45-X-I, *Instructions for Form NYS-45-X.)*

Overcollections

If more than the correct amount of New York State, New York City (if applicable), and Yonkers (if applicable) income tax is deducted from any wage payment made to an employee, the amount of the overcollection should be repaid to the employee in the same calendar year in which the overcollection occurred. The employer must get, and keep as a part of his or her records, a written receipt from the employee showing the date and the amount of the repayment.

Any overcollections not repaid to the employee within the same calendar year must be reported and paid to the Tax Department with Forms NYS-1, Form NYS-45, or both.

If you discover an overcollection, you must make the appropriate correction indicated below.

- **Overcollection discovered prior to filing Form NYS-45 for the same calendar quarter**

  If you have not yet filed Form NYS-45 for the quarter in which the overcollection occurred, you must correct the overpayment by entering the correct amount of the withholding tax liability on the applicable form and repaying the overcollection to the employee.

- **Overcollection discovered in a subsequent calendar quarter**

  If you discover an overcollection after the calendar quarter in which it occurred, but prior to filing Form NYS-45 for the final quarter of the same calendar year, you must file an amended return on Form NYS-45-X for the quarter in which the overpayment occurred.

  If the employer shows an overpayment or an overcollection discovered in a later quarter, and has repaid the overcollection to the employee, this overpayment may only be refunded. The employer may not elect to credit the overpayment to a later quarter.

Any overcollection of New York State, New York City (if applicable), or Yonkers (if applicable) taxes, that is the result of an incorrect number of allowances claimed by an employee on Form W-4 or Form IT-2104, is **not** to be repaid to an employee by the employer. The employee must file a New York State personal income tax return to receive a refund of withholding tax.

X. Payroll reporting or service agencies

Employers or groups of employers may use a reporting or service agency to file New York State withholding and wage reporting returns and to remit payments of withheld taxes on the employer's behalf in compliance with the Tax Law. The filing of New York State employers' returns and remittance of withheld taxes by a reporting or service agency on behalf of employers or groups of employers does not relieve each such employer from all provisions of law (including penalties) applicable with respect to employers.

If you are a payroll reporting or service agency for one or more employers, you must report New York State income tax withholding and wage reporting information under the federal EIN of the individual employer, not under the payroll reporting or service agency federal EIN.

Y. Statements for employees and annuitants

Form W-2, *Wage and Tax Statement*

Each year by February 15, you must furnish two copies of federal Form W-2, to each employee from whom any amount of New York State income tax, New York City resident tax, and Yonkers resident tax surcharge or nonresident earnings tax was withheld, or would have been withheld under the approved tables and other methods if the employee had claimed no more than one withholding allowance or, in the case of Yonkers nonresident earnings tax, if any amount would have been required to be withheld under the approved tables and other methods. Even if you have reduced the amount of New York State (and, if applicable, New York City and Yonkers) withholding from an employee's wages because you are required to deduct taxes of other states, their political subdivisions or the District of Columbia, you must furnish two copies of Form W-2 to that employee.

Employer requirements concerning the reporting of New York State, New York City, and Yonkers wages on federal Form W-2

The Tax Department requires all employers to complete the *State wages, tips, etc.* box of federal Form W-2 for any employee who has federal wages subject to New York State income tax withholding.

The following guidelines must be used for determining the amount of wages to be reported on federal Form W-2 for New York State purposes:

- **Full-year New York State resident employees —** The amount of wages that must be reported in the *State wages, tips, etc.* box on federal Form W-2 is the same as the amount of federal wages required to be reported in box 1, *Wages, tips, other compensation*.
- **Full-year New York State nonresident employees who perform all of their services in New York State —** The amount of wages that must be reported in the *State wages, tips, etc.* box on federal Form W-2 is the same as the amount of federal wages required to be reported in box 1, *Wages, tips, other compensation*.
- **Full-year New York State nonresident employees who do not perform any services in New York State —** If a nonresident employee does not perform any services in New York State for the entire tax year, the employer is not required to report any New York State wages in the *State wages, tips, etc*. box on federal Form W-2. However, if the employee receives compensation that is considered wages for federal income tax purposes and reported on federal Form W-2, any part of which is attributable to services performed in New York State in a prior tax year(s), the amount of wages that must be reported in the *State wages, tips, etc*. box on federal Form W-2 is the same amount of federal wages required to be reported in box 1, *Wages, tips, other compensation*. The amount is federal wages before any allocation that the employee may have claimed on Form IT-2104.1. The employee will allocate the part of the employee's federal wages that are attributable to services performed in New York State in the prior year(s) when the employee files his or her New York State nonresident income tax return.
- **Full-year New York State nonresident employees who perform only a portion of their services in New York State —** If at any time during the tax year a nonresident employee performs services in New York State (for example, two days a week, every other week, every other month, one month a year, etc.), the amount of wages that must be reported in the *State wages, tips, etc*. box on federal Form W-2 is the same amount of federal wages required to be reported in box 1, *Wages, tips, other compensation*. The amount is federal wages before any allocation that the employee may have claimed on Form IT-2104.1. The employee will allocate the part of the employee's federal wages that are attributable to services performed in New York State when the employee files his or her New York State nonresident income tax return.
- **Part-year New York State residents —** For a part-year New York State resident, the amount of wages that must be reported in the *State wages, tips, etc.* box on federal form W-2 is the same amount as the federal wages required to be reported in box 1, *Wages, tips, other compensation*. That amount is federal wages before any allocation that the employee may have claimed on Form IT-2104.1. The employee will allocate the part of the employee's federal wages that is attributable to services performed in New York State during the employee's nonresident period when the employee files his or her New York State part-year resident income tax return.

The following guidelines must be used for determining the amount of wages to be reported on federal Form W-2 for New York City purposes:

- **Full-year New York City residents —** For a full-year New York City resident, the amount of wages that must be reported in the *Local wages, tips, etc*. box on federal Form W-2 is the same amount as the federal wages required to be reported in box 1, *Wages, tips, other compensation*.
- **Part-year New York City resident —** For a part-year New York City resident, the employer must report in the *Local wages, tips, etc*. box on federal Form W-2 only the amount of federal wages for the period the employee was a New York City resident.
- **Full-year New York City nonresident —** In the case of a full-year New York City nonresident, the employer is not required to report any

New York City wages in the *Local wages, tips, etc*. box on federal Form W-2.

The following guidelines must be used for determining the amount of wages to be reported on federal Form W-2 for Yonkers purposes:

- **Yonkers —** The guidelines set forth for New York State purposes (above) are also applicable to the amount of wages required to be reported in the *Local wages, tips, etc*. box on federal Form W-2 for any employee subject to Yonkers income tax withholding. Substitute *Yonkers* and *Local wages, tips, etc.* box for *New York State* and *State wages tips, etc*. box to determine the amount of Yonkers wages to be reported in the *Local wages, tips, etc*. on federal Form W-2.

If the filing of Form W-2 is required for an employee, whether a resident, nonresident or part-year resident of New York State, New York City, or Yonkers, the employee's total wages, tips, and other compensation for services both in and out of New York State are to be reported as described above.

Employers **do not submit a copy of Form W-2** to New York State. Instead, employers must report annual wage and withholding information on the final quarterly combined withholding, wage reporting, and unemployment insurance return filed for the year. Certain employers are required to submit wage and withholding information electronically. See part AA, *Web upload*, below for more information on electronic filing requirements.

Employers **do not submit a copy of federal Form(s) 1099** to New York State. New York State no longer requires the annual filing of Form 1099 information returns. However, New York State does require the reporting of Form 1099-R payments if there was New York State, New York City, or Yonkers income tax withheld (see *Annuities subject to income tax withholding* below).

Supplemental unemployment compensation benefits subject to income tax withholding — Furnish two copies of Form W-2 to each payee as if wages had been paid.

Annuities subject to income tax withholding — If you are a payer of annuities and you withheld New York State income tax, New York City resident tax, or Yonkers resident tax surcharge from annuity payments, you must give each annuitant from whom you withheld New York State or city tax two copies of federal Form 1099-R (instead of a Form W-2) showing the gross amount of annuity payments and showing separately the amounts of New York State income tax and city resident tax withheld during the year.

You do not submit a copy of Form 1099-R to New York State. Instead, payers of annuities must report annuity and withholding information in columns d and e of part C on the Form NYS-45 or NYS-45-ATT (whichever is applicable) of the final employer quarterly withholding, wage reporting, and unemployment insurance return filed for the year. See Form NYS-45-I, *Instructions for Form NYS-45*, for more information.

Statements for employees and annuitants — Wage and tax statements on Form W-2 and Form 1099-R for a calendar year and any corrected statements made for that year must be furnished to employees not later than February 15 following the close of the calendar year. However, if an employee leaves your service before the close of the calendar year and is not expected to return to work within the calendar year, the statement must be furnished to the employee not later than 30 days after the last payment of wages is made to the employee.

Undeliverable forms

Generally, any copies of Forms W-2 and Form 1099-R that cannot be delivered (after reasonable effort), must be transmitted to New York State with your Forms NYS-45 and NYS-45-ATT covering the second calendar quarter of the next year, along with a letter stating that the Form(s) W-2 and/or 1099-R are undeliverable.

Z. Records to be kept

Refer to federal Publication 15, Circular E, for a description of the records to be kept.

In addition to the records listed in federal Publication 15, Circular E, you must keep a record of the withholding allocation used for New York State nonresident employees performing services partly in New York State and the allocation used for Yonkers nonresident employees performing services partly in Yonkers.

Every employer or withholding agent required to withhold state and city taxes, and every person required to file information returns must keep all records of these taxes and information returns available for review by the Tax Department. Keep these records for four years after the due date of the tax for the return period to which the records relate, or the date the tax is paid, whichever is later. Records for information returns must be kept for four years after the due date of the information return.

AA. Web upload

Employers that have been required to report 250 or more employees in four consecutive quarters are required by New York State to report employee wage and withholding information using our Web upload. Other employers may elect to file using Web File. The specifications for filing are detailed in Publication 69, *Electronic Reporting of Quarterly Combined Wage and Withholding Tax Information;* Publication 911, *Electronic Reporting of Quarterly Wage and Withholding Tax Information Based on Federal Formats;* and Publication 66, *Electronic Reporting of Form NYS-1 Information*. The Tax Department will contact employers for whom filing online becomes required. To get more information and a copy of the publications, see *Need help?* on page 45.

BB. PrompTax Program

The largest withholding tax filers must file and remit taxes through an electronic filing and funds transfer program (PrompTax). Employers required to participate in PrompTax are notified by the Tax Department of their responsibilities and any program changes.

4. Labor Department and Tax Department — Filing requirements and related information

Summary of penalties

The following is a summary of penalties that may be imposed for failure to perform certain acts relating to the filing of Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return* (and Form NYS-45-ATT, *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return-Attachment*, if applicable). These penalties are provided for under section 685 of the Tax Law and sections 575-a and 581.2(b) of the Unemployment Insurance Law. Unless otherwise stated in the individual penalty descriptions, these penalties may be imposed in addition to any other penalty or addition to tax and UI contributions provided by law.

Failure to file Form NYS-45 (including Form NYS-45-ATT, if required)

For failure to file a required Form NYS-45 (including Form NYS-45-ATT, if required) or any required part of such form, by the prescribed due date, the penalty imposed is equal to the greater of $1,000 or $50 multiplied by the number of employees shown on the last Form NYS-45 or NYS-45-ATT filed by the employer. The maximum penalty that may be imposed is $10,000 for any one calendar quarter (section 685(v)(1) of the Tax Law).

Late filed Form NYS-45 or NYS-45-ATT

Within 30 days of notification — If an employer files Form NYS-45 (or any omitted part of such form) or Form NYS-45-ATT, if required, within 30 days after the date the Tax Department notifies the employer of such failure by certified mail, the penalty will be abated. In addition, the employer will not be liable for the late filing penalty imposed under section 685(a)(1) of the Tax Law or section 581.2(b) of the Unemployment Insurance Law.

However, the employer is still liable for any penalties imposed for failure to pay the tax shown on the return under section 685(a)(2) or failure to pay the tax required to be shown on the return under section 685(a)(3) of the Tax Law.

Special rule: If an employer is awarded the relief provided above for filing within 30 days of notification, the employer will **not** be granted the same relief for failure to file for four successive calendar quarters. If the employer fails to file Form NYS-45 (or any portion of the form) or Form NYS-45-ATT by the prescribed due date for any of the four successive quarters, but files within 30 days of notification from the Tax Department, the employer will be subject to a penalty equal to the lesser of $50 multiplied by the number of employees actually shown on the employer's late filed Form NYS-45 or Form NYS-45-ATT (but not less than $1,000 or more than $10,000), **or** the sum of the late filing penalties imposed under sections 685(a)(1) of the Tax Law and 581.2(b) of the Unemployment Insurance Law.

After 30 days of notification — If an employer files Form NYS-45 (or any omitted part of such form), or Form NYS-45-ATT, if required, more than 30 days after the date the Tax Department notifies the employer by certified mail of the employer's failure to file, the employer will be subject to a penalty equal to the greater of $50 multiplied by the number of employees actually shown on the employer's late-filed Form NYS-45 or NYS-45-ATT (but not less than $1,000 **or** more than $10,000), **or** the sum of late filing penalties imposed under sections 685(a)(1) of the Tax Law and 581.2(b) of the Unemployment Insurance Law.

Late filing Form NYS-45 prior to notification — If an employer files Form NYS-45 (or any omitted part of such form), or NYS-45-ATT after the prescribed due date for filing but prior to the Tax Department notifying the employer by certified mail of the failure to file, then the late filing penalties provided for under sections 685(a)(1) and (v)(1) of the Tax Law and 581.2(b) of the Unemployment Insurance Law will not be imposed.

Special rule: If an employer is awarded the relief provided above for late filing prior to notification, the employer will **not** be granted the same relief for failure to file for four successive quarters. If the employer fails to file Form NYS-45 (or any portion of the form) or Form NYS-45-ATT by the prescribed due date for any of the four successive calendar quarters, but files prior to notification from the Tax Department, the employer will be subject to a penalty equal to the lesser of $50 multiplied by the number of employees actually shown on the employer's late-filed Form NYS-45 or Form NYS-45-ATT (but not less than $1,000 or more than $10,000), **or** the sum of the late filing penalties imposed under sections 685(a)(1) of the Tax Law and 581.2(b) of the Unemployment Insurance Law.

Audit intervention for failure to file — If an employer fails to file Form NYS-45 (or any part of such form) or Form NYS-45-ATT, and an audit is subsequently initiated by the Tax Department, the Department of Labor, or both, the employer will be subject to the penalty shown above for *Failure to file Form NYS-45.* In addition, the employer may be subject to a penalty of 5% per month (maximum of 25%) for late filing imposed under section 685(a)(1) of the Personal Income Tax Law as well as 5% per month (maximum of 25%) of the unemployment insurance contributions due, minimum of $100, imposed under section 581.2(b) of the Unemployment Insurance Law.

Failure to provide complete and correct employee withholding reconciliation information

If an employer fails to provide complete and correct **annual** withholding information relating to individual employees in columns d and e of Form NYS-45, Part C, *Employee wage and withholding information* (or columns d and e of Form NYS-45-ATT, if applicable), covering the last calendar quarter of the year, the employer may be subject to a penalty of $50 multiplied by the number of employees for whom such information is incomplete or incorrect. If the number of employees cannot be determined from the Form NYS-45 (or NYS-45-ATT, if applicable), the Tax Department may estimate the number of employees/payees using any information in its possession. The maximum penalty that may be imposed for this failure is $10,000 for any one calendar year (Tax Law section 685(v)(3)).

Late filing of employee withholding reconciliation information

If an employer late files annual withholding information relating to individual employees in columns d and e of Form NYS-45, Part C, *Employee wage and withholding information* (or columns d and e of Form NYS-45-ATT, if applicable) after the due date (January 31), then such employer may be subject to a penalty of $50 multiplied by the number of employees for whom such information is filed late. The maximum penalty that may be imposed for this late filing is $10,000 for any one calendar year (Tax Law section 685(h)(1)).

Failure to provide complete and correct quarterly withholding information unrelated to individual employees

If an employer fails to provide complete and correct **quarterly** withholding information on Form NYS-45, Part B, *Withholding tax (WT) information*, the employer may be subject to a penalty of 5% of the quarterly withholding tax liability required to be shown in Part B of Form NYS-45. If the withholding tax liability cannot be determined, the Tax Department may estimate the withholding tax liability for purposes of computing this penalty using any information in its possession. The maximum penalty that may be imposed for this failure is $10,000 for any one calendar quarter (Tax Law section 685(v)(4).

Complete and correct information provided within 30 days of notification — If the employer submits the complete and correct quarterly withholding information, which was **not** previously reported in Part B of Form NYS-45, within 30 days after being notified by the Tax Department by certified mail, the penalty imposed for failure to provide complete and correct quarterly withholding information unrelated to individual employees will be abated.

Failure to file using prescribed format (reporting media)

If an employer who is required to file its quarterly combined withholding, wage reporting, and unemployment insurance return using Web upload fails to do so using the prescribed format, the employer may be subject to a penalty of $50 multiplied by the number of employees required to be shown on such return. The maximum penalty that may

be imposed for this failure is $10,000 for any one calendar quarter (Tax Law section 685(v)(5)).

Filing using prescribed format within 30 days of notification — If within 30 days after notification from the Tax Department by certified mail, the employer files its quarterly combined withholding, wage reporting, and unemployment insurance return using the prescribed format, the penalty imposed for failure to file using the prescribed format will be abated.

Other penalties that may apply include, but are not limited to:

Late filing penalty

The penalty under section 685(a)(1) for late filing is 5% of the unpaid tax for each month (or part of a month) the return is late. This penalty cannot exceed 25% of the tax paid late unless the return is more than 60 days late, in which case the penalty will not be less than the lesser of $100 or 100% of the amount required to be shown as tax on the return.

Late payment penalty

The penalty under section 685(a)(2) is ½ of 1% of the unpaid tax for each month (or part of a month) the payment is late. This penalty cannot exceed 25% of the tax paid late.

Interaction of late filing and late payment penalties — The late filing penalty will be reduced by ½% (to 4½%) for each month in which **both** the late filing and late payment penalties are imposed.

New hire reporting penalties

The penalty under 685(w) for failure to timely report newly hired employees or for failure to file a report showing the required information is $20, multiplied by the number of employees not reported or the number of false or incomplete reports filed. However, if the failure is a result of a conspiracy between the employer and employee, the penalty will be $450, multiplied by the number of employees not reported or the number of false or incomplete reports filed.

Withholding tax fraud

The penalty is two times the deficiency of tax (Tax Law section 685(e)).

Willful failure to collect and pay over tax

Any person required to collect and pay over withholding tax who willfully fails to do so shall be liable for a penalty equal to the total amount of the tax not collected or paid over as well as any interest due on the tax. The amount of interest is calculated from the date the failure occurred to the date the penalty is paid (Tax Law section 685(g)). (See part D, *Personal responsibility*, on page 26.)

Individual penalties

A penalty of $5,000 is imposed on persons who for a fee, compensation, or as an employee, aid or assist in the giving of fraudulent returns, reports, statements, or other documents (section 685(r) of the Tax Law). A penalty of $500 per statement is imposed on an individual who makes a statement that decreases income tax withholding without a reasonable basis (i.e., a taxpayer claims excessive withholding allowances resulting in underwithholding of tax for the year). This penalty will be waived if the individual's tax liability is equal to or less than the taxpayer's credits (including the credits for tax withheld and estimated tax). (Tax Law section 685(s))

Criminal penalties

Any person who commits a tax fraud act as defined in Article 37 of the Tax Law would be committing a class A misdemeanor. If a person commits a tax fraud act with intent to defraud the state or political subdivision or to evade tax, the person is committing a class E, D, C or B felony.

For additional information, see TSB-M-09(12)I, *Amendments That Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*.

A person who willfully fails to pay over any withholding tax will also be prosecuted under the Penal Law, possibly for a felony.

Additional assessments under the Unemployment Insurance Law

Unemployment insurance failure to file penalty

The penalty under section 581.2(b) of the Unemployment Insurance Law for failure to file a return is 5% of the unemployment insurance contributions due for each month the return is late, up to 25%. The penalty may be no less than $100.

SUTA dumping penalties

Employers and financial advisors engage in SUTA dumping when they attempt to manipulate state experience rating systems in order to obtain a lower UI rate than their unemployment experience would otherwise allow.

SUTA dumping is present when a business attempts to transfer to another employer, where there is at least 10 percent common ownership, management, or control of the two employers, some or all of its workforce, payroll, or both. SUTA dumping also occurs when a person who is not liable for contributions at the time he or she acquires a business of an employer is found to have acquired the business solely or primarily for the purpose of obtaining a lower rate.

A penalty is assessed if a violation of the statute is determined to have occurred. The penalty will be 10 percent of the employer's wages subject to contributions in the last completed payroll year, or $10,000, whichever is greater. An individual who knowingly advises another individual to violate or attempt to violate the statute is subject to a civil penalty of $10,000. In addition to these penalties, any violation of this statute constitutes a Class E felony punishable by imprisonment.

The New York State Department of Labor has developed programs and procedures to detect SUTA dumping. You may report any possible incident of SUTA dumping by contacting the Unemployment Insurance Special Services and Liability Unit at (518) 485-2144, or by calling our confidential 24 hour toll-free fraud number at 1 888 598-2077.

Wage reporting accuracy

When inaccurate or incomplete information in the wage reporting system is discovered through the benefit claim process, a $25 penalty is assessed.

When inaccurate or incomplete wage reporting information is discovered through a review of an employer's records, the following penalties apply for each employee for whom information is not reported accurately:

- For the first failure for any calendar quarter in any eight consecutive calendar quarters, $1 per employee, not to exceed $1,000.
- For the second failure for any calendar quarter in any eight consecutive calendar quarters, $5 per employee not to exceed $2,000.
- For any subsequent failure in any eight consecutive calendar quarters, $25 per employee not to exceed $5,000.

If an employer provides complete and correct wage information within 30 days of receiving notification of such failure, this penalty will be abated.

Unemployment insurance fraud

If an employer's failure to comply with unemployment insurance reporting requirements is determined to be due to fraud with the intent to avoid payment, 50% of the total amount of the deficiency may be assessed and collected in the same manner as if it were additional contributions due. Criminal penalties may also be imposed.

Additional assessments under the New York State Construction Industry Fair Play Act

The New York State Construction Industry Fair Play Act took effect on October 26, 2010. The law created a new standard for determining whether a worker is an employee or independent contractor in the construction industry. It provides new penalties for employers who fail to properly classify their employees.

Penalties

An employer that willfully violates the Fair Play Act by failing to properly classify its employees will be subject to civil penalties of up to a $2,500 fine per misclassified employee for a first violation and up to $5,000 per

misclassified employee for a second violation within a five-year period (Labor Law section 861-e(3)).

Employers also may be subject to criminal prosecution (a misdemeanor) for violations of the act with a penalty of up to 30 days in jail, up to a $25,000 fine and debarment from Public Work for up to one year for a first offense. Subsequent misdemeanor offenses would be punishable by up to 60 days in jail, up to a $50,000 fine and debarment from performing Public Work for up to five years (Labor Law section 861-e(4)).

Employers also remain subject to all of the existing penalties, contributions, and restitution for Labor Law, Workers' Compensation Law, and Tax Law violations that result from the worker misclassification (Labor Law section 861-e(6)).

Corporate officers and certain shareholders may be personally liable for the fines and penalties under the Act, where they knowingly permit the violations to occur (Labor Law section 861-e(5)).

Posting

Construction industry employers must post a notice about the Fair Play Act in a prominent and accessible place on the job site. The required notice is available on the Labor Department's Web site at *www.labor.ny.gov* or can be obtained by calling 1 888 890-8810 or (518) 485-8589. Failure to post the notice can result in penalties of up to $1,500 for a first offense and up to $5,000 for a second offense (Labor Law section 861-d(3)).

Important unemployment insurance, withholding tax, and wage reporting dates*

January 31**	Form NYS-45, Parts A and B, must be filed on or before January 31 for the October 1 through December 31 calendar quarter (final quarter of the previous year).
January 31**	Form NYS-45, Part C (or Form NYS-45-ATT, if applicable) for the October 1 through December 31 calendar quarter (final quarter of the previous year) is required to be filed on or before January 31. In addition to quarterly employee wage information (columns a, b and c), the last Form NYS-45 or Form NYS-45-ATT filed for the calendar year must also contain annual employee wage and tax information (columns d and e). Employers opting to file employee wage and tax information separately from the Form NYS-45 due January 31 must do so on separate Form(s) NYS-45-ATT.
February 15	Forms W-2 and 1099-R must be issued to employees/payees by this date.
April 30**	Form NYS-45, Parts A, B, and C (columns a, b, and c) and Form NYS-45-ATT, if applicable, are due for the January 1 through March 31 calendar quarter.
July 31**	Form NYS-45, Parts A, B, and C (columns a, b, and c) and Form NYS-45-ATT, if applicable, are due for the April 1 through June 30 calendar quarter.
October 31**	Form NYS-45, Parts A, B, and C (columns a, b, and c) and Form NYS-45-ATT, if applicable, are due for the July 1 through September 30 calendar quarter.

* New York Tax Law permits you to file on the next business day when the actual due date falls on a Saturday, Sunday, or the following legal holidays: New Year's Day, Martin Luther King's birthday, Presidents' Day, Memorial Day, Independence Day (4th of July), Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

** Employers with seasonal businesses should see part V, *Seasonal employers*, on page 32, for their filing requirements.

Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income

Income item	Unemployment insurance and wage reporting requirement	Withholding tax requirement
Agricultural wages 1. cash payments 2. non cash payments	 Yes Yes	 Yes, if wages paid are subject to federal income tax withholding (see federal Publication 51, Circular A, *Agricultural Employer's Tax Guide)*. No
Back pay	Yes	Yes, unless made solely by a labor organization if the individual's employer is not a party to the back-pay award order.
Barter income	Yes, if paid as an employee for service in the course of the employee's business.	No
Bonuses	Yes	Yes, if paid as compensation for services performed by the employee for his/her employer.
Cafeteria plans/flexible spending accounts (contributions under IRC 125(a))	Yes, regardless of whether the employee chooses cash or a qualified benefit.	No, if the employee chooses a qualified benefit and it is not subject to federal income tax withholding. Yes, if the employee chooses cash.
Cancellation of indebtedness	Yes, if for services.	No
Cash salary	Yes	Yes, unless Form IT-2104-E, IT-2104-IND, or IT-2104-MS is filed by the employee claiming exemption from New York State, New York City, and Yonkers income tax withholding.
Commissions	Yes	Yes, if paid as compensation for services performed by the employee for his/her employer.
Compensation attributable to nonstatutory stock options	When exercised, the difference between the option price and the fair market value is remuneration. However, if the payment has a condition that is based solely on separation from employment, it may constitute dismissal pay. If it is dismissal pay, it is reportable for UI if liable under FUTA.* For information on whether the compensation is dismissal pay, contact the Labor Department's Liability and Determination section. See page 46.	Yes
Dependent care assistance (limited to $5,000; $2,500 if married filing separately)	Yes	No, unless federal income tax withholding is required.
Disability payments	Yes, for first 6 months of payments, if liable under FUTA.* No, for amounts paid after the first 6 months of payments.	Yes, if federal income tax withholding is required.
Distribution and dividend pay to corporate officers for services performed	Yes	Yes, if federal withholding is required
Educational assistance	Yes	No, unless federal income tax withholding is required

Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income *(continued)*

Income item	Unemployment insurance and wage reporting requirement	Withholding tax requirement
Employee's distributions from pensions and other retirement plans		
1. 401(k) plan	No	No**
2. 403(b) plan (NYS organization or public school)	No	No**
3. SEP plan	No	No**
4. 457 plan (state and local governments)	No	No**
5. 457 plan (non-governmental tax-exempt entities)	No	Yes
6. Qualified annuity (403(a) plan)	No	No**
7. Public employee 414(h) retirement distribution	No	No
8. New York City IRC 125 flexible benefits program	No	No
9. Nonqualified plans	No	No**
Employer's and/or employee elective contributions to pensions and other retirement benefits	+ Employer contributions are subject to UI contributions unless the payment is to a plan to be used exclusively for retirement, sickness, accident, medical, hospital, or death benefits covering all or a class of employees.	
1. 401(k) plan	Yes+	No, unless subject to federal income tax withholding.
2. 403(b) plan (NYS organization or public school)	Yes+	No, unless subject to federal income tax withholding.
3. SEP plan	Yes+	No, unless subject to federal income tax withholding.
4. Simple retirement account provided under IRC 408(p) (employee salary reduction or contribution to)	Yes+	No
5. 457 plan (state and local governments, and tax-exempt organizations)	Yes+	No
6. Qualified annuity (403(a)) plan	Yes+	No
7. Public employee 414(h) retirement contributions (members of the New York State and Local Retirement Systems [including the New York State Employees' Retirement System and the New York State Police and Fire Retirement System], New York State Teachers' Retirement System, or an Employee of the State or City University of New York who belongs to the TIAA/CREF Optional Retirement System or any Tier member of the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Board of Education Retirement System, Manhattan and Bronx Surface Transit Operating Authority, the New York City Police Pension Fund, or the New York City Fire Department Pension Fund)	Yes+	Yes
8. New York City IRC 125 flexible benefits program (established by New York City and certain other New York City public employers [City University of New York, New York City Health and Hospitals Corporation, New York City Transit Authority, New York City Housing Authority, New York City Off-Track Betting Corporation, New York City Rehabilitation Mortgage Insurance Corporation, New York City Board of Education, New York City School Construction Authority, Manhattan and Bronx Surface Transit Operating Authority, or the Staten Island Rapid Transit Authority], on the employees' behalf)	Yes+	Yes
9. Nonqualified plans	Yes+	No, unless subject to federal income tax withholding.

Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income *(continued)*

Income item	Unemployment insurance and wage reporting requirement	Withholding tax requirement
Fees		
1. Speaker's	No, unless for services as an employee.	No
2. Notary public	No	No
3. Jury or witness	No	No
4. Election official	No, unless for services as an employee.	No
Fishing-related activities	Yes	Yes, if subject to federal income tax withholding because it is paid in cash. No, if exempt from federal income tax withholding because the income is derived by Native Americans exercising fishing rights.
Fringe benefits (that are not allowed as a deduction from the employee's federal gross income)		
1. Cars provided (personal use)	Yes	Yes, unless the employer elects not to withhold federal income tax and (1) gives the employee advance written notice of the election, and (2) includes the taxable amount of the benefit as income on the employee's wage and tax statement.
2. Flights on aircraft furnished by employer	Yes	Yes
3. Free or discounted commercial flights	Yes	Yes
4. Discounts on property or services	Yes	Yes
5. Memberships in social clubs/country clubs	Yes	Yes
6. Tickets to entertainment or sports events	Yes	Yes
7. Outplacement services	Yes	Yes
8. Supper money	Yes	Yes
9. Reimbursement of employment agency fee	Yes	Yes
10. Meals and lodging	Yes (the reasonable value of any meals, rent, and lodging provided by employers)	Yes
Gambling winnings	No	Yes, if the winnings are from the NYS Lottery, are paid to an individual, and the proceeds from such wager exceed $5,000. No, if the winnings are from a wagering transaction in a pari-mutuel pool for horse races, regardless of the proceeds realized from such wager.
Group-term life insurance	No	No
Household help 1. Employee compensation	Yes	No, unless voluntary agreement to withhold New York State, New York City, or Yonkers tax between employer and employee is in effect. See New York State Tax Department bulletin TB-MU-350, *Hiring Household Help*, for more information.
2. Social security tax payments (employer's payment of employee's share)	No	No
Income in respect of a decedent (regardless of whether paid in year of death or year after death)	Yes	No
Insurance proceeds (life insurance, endowment contracts)	No	No
Interest and dividends	Yes, if for services.	No
Interest-free and below-market-interest-rate loans (paid by employer)	Yes	No
IRA contributions	No, unless a salary reduction plan.	No, regardless of whether the contributions to the plan are deductible or nondeductible from the employee's federal adjusted gross income.

Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income *(continued)*

Income item	Unemployment insurance and wage reporting requirement	Withholding tax requirement
IRA distributions (deductible or nondeductible)	No	No, if the contributions to the plan were deductible or nondeductible, or if it is a qualified rollover.** No, if it is a lump-sum payment.
Lump-sum accumulated sick leave pay	Yes	Yes
Military (payments of wages made to)		
1. residents	Yes, for persons who render services for State, National Guard, or Air National Guard as regular state employees.	Yes, unless the individual filed Form IT-2104-MS with the employer because he or she meets the conditions for nonresident status.
2. nonresidents	Yes, for persons who render services for State, National Guard, or Air National Guard as regular state employees.	No, unless income is received from a civilian job in New York State during off-duty hours.
Moving expense reimbursement	Yes, if liable under FUTA for such payments.*	No, unless federal income tax withholding is required.
Nontaxable fringes		
1. No additional cost services	Yes	No
2. Qualified employee discounts	Yes	No
3. Working condition fringes	Yes	No
4. Minimal value fringes	Yes	No
5. Qualified transportation fringes	Yes	No
6. Meals provided on employer's premises for employer's convenience	Yes	No
Overtime pay	Yes	Yes
Payments or distributions of deferred compensation	No, for UI purposes. Yes, for wage reporting purposes, if the payment or distribution is considered wages for federal income tax purposes.	Yes, if the payment or distribution is considered wages for federal income tax purposes.
Prizes and awards to employees	Yes	Yes, unless it is not subject to federal income tax withholding because it is reasonably believed to be excludable as an employee achievement award, qualified scholarship, or fringe benefit.
Prize money for recreational bowling	No	No
Retroactive pay increases	Yes	Yes
Salary paid in form other than cash	Yes	Yes, based on the fair market value of property given as payment.
Scholarship and fellowship grants	No, unless liable under FUTA (see Federal Publication 15, Circular E).	Yes, if federal income tax withholding is required.
Severance and dismissal pay	Yes, if liable under FUTA for such payments.*	Yes
Sick pay	Whether paid by employer or third party: Yes, for first 6 months of payments (including sickness, accident, or disability), if liable under FUTA.* No, for amounts paid after the first 6 months of payments. Occupational related workers' compensation payments are **not** considered sick pay and are neither reportable nor subject to contributions.	Yes, if paid by employer, or employer's agent.* No, if paid by third party who is not an agent unless withholding is requested by the employee.* * See IRS Publication 15-A, *Employer's Supplemental Tax Guide*, for more information.
Social security benefits	No	No

Unemployment insurance, wage reporting, and withholding tax requirements for certain items of income *(continued)*

Income item	Unemployment insurance and wage reporting requirement	Withholding tax requirement
Student wages		
1. Elementary and secondary school students	Yes, if liable under FUTA or a governmental entity, Indian tribe, or nonprofit organization (except certain camps; see chart on page 10.)***	Yes, unless the individual filed Form IT-2104-E with the employer because he or she meets the conditions for exemption from withholding.
2. College and other students in school beyond high school	Yes, unless in a work study program, or employed by certain camps or the educational institutional they are attending (see chart on page 10).	Yes, unless the individual filed Form IT-2104-E with the employer because he or she meets the conditions for exemption from withholding.
Supplemental unemployment compensation	No	Yes, to the extent includable in the employee's New York adjusted gross income or New York source income.
Tips (cash)		
1. if $20 or more in a month	Yes	Yes
2. if less than $20 in a month	Yes	No
Unemployment compensation	No	No, unless requested by claimant
Vacation and holiday pay	Yes For UI purposes: Vacation and holiday pay affect entitlement.	Yes
Welfare payments	No	No
Workers' compensation payments	No	No

* Nonprofit organizations, governmental entities, and Indian tribes are not required to report these items. All other employers may report and pay unemployment insurance contributions on these items either quarterly or annually (see *Annual reports* on page 13). However, to satisfy wage reporting requirements, these items must also be reported by such employers quarterly as *Other wages* on Form NYS-45-ATT (see section 2, part G*, Gross wages for purposes of wage reporting*, on page 25). These items are not used in computing a claimant's unemployment insurance benefit rate.

** However, New York State, New York City, and Yonkers income tax withholding is required if the payee requests it using Form IT-2104-P.

*** Nonprofit organizations, governmental entities, and Indian tribes must report and pay unemployment insurance contributions on these wages quarterly (Part A of Form NYS-45). All other employers may report and pay unemployment insurance contributions on these wages either quarterly or annually (see *Annual reports* on page 13). However, to satisfy wage reporting requirements (Part C of Form NYS-45 or Form NYS-45-ATT), all employers must report these wages quarterly as regular wages.

5. Tax Department — New hire reporting requirements

All employers must report to the New York State Department of Taxation and Finance certain identifying information about each newly hired or rehired employee working in New York State.

- A *newly hired or rehired employee* means an employee previously not employed by the employer, or previously employed by the employer but separated from such prior employment for 60 or more consecutive days.
- An *employer* for new hire purposes is defined the same as for federal income tax withholding purposes (section 3401(d) of the IRC of 1996). This includes employers of domestic help, labor organizations (including hiring halls), and governmental entities (except for federal agencies, which report directly to the National Directory of New Hires).
- Employers have **20 calendar days after** the hiring date to report newly hired or rehired employees who will be employed in New York State. If an employer reports electronically, the employer must report using two monthly submissions (if needed) not less than 12 nor more than 16 calendar days apart.

  Note: If you have a newly hired **nonresident alien** visa employee, you have 20 calendar days to report the new hire starting from the date the employee receives a social security number (SSN) from the Social Security Administration. A nonresident alien employee should file for a social security number at the start of employment. You should exercise due diligence to have the employee provide the SSN when it is received. You cannot submit a report without an employee's SSN or use an Individual Taxpayer Identification Number (ITIN) or Resident Alien *(green card)* number in place of the SSN.
- The hiring date is the first day compensated services are performed by an employee. This would be the first day any services are performed for which the employee will be paid wages, commissions, tips, or other compensation. For services based solely on commissions, this is the first day an employee working for commissions is eligible to earn commissions.
- The following information must be provided for each employee:
  - employee name (first, middle initial, last)
  - employee address (street, city, state, and ZIP code)
  - employee social security number
  - employee hire date
  - employer name
  - employer address (street, city, state, and ZIP code)
  - employer identification number (assigned by the IRS)
  - if dependent health insurance benefits are available to the employee and if so, the date the employee qualifies for the benefits
- The required information can be reported electronically, by fax, or by mail as follows:
  - online via the Web site at *www.nynewhire.com*;
  - by submitting mail to: NYS Dept of Taxation & Finance, New Hire Notification, PO Box 15119, Albany NY 12212-5119; or by fax to (518) 320-1080:
    - a completed and legible copy of the employee's Form IT-2104, *Employee's Withholding Allowance Certificate* (or Form IT-2104-E, *Certificate of Exemption from Withholding)*; or
    - a completed and legible copy of the employee's federal Form W-4, *Employee's Withholding Allowance Certificate,* or equivalent form as developed by the employer. If this option is used, you must also submit a completed Form IT-2104 or Form IT-2104-E, whichever is applicable, for each employee.

Electronic filers may obtain updated specifications by contacting Employer Outreach at (518) 320-1079.

Since employees complete the withholding allowance form, employers must review the form to ensure the information is complete and legible. Employers must complete the form with their required information, including the employer's name, address, employer identification number (EIN), whether dependent health insurance benefits are available to the employee and if so, the date the employee qualifies for the benefits, and the hire date.

Employers who have employees in more than one state and who report electronically may designate one state (in which he or she has employees) to report newly hired employees. Those multistate employers electing one state must notify the federal Department of Health and Human Services as to which state has been selected for reporting. Mail the Multistate Employer Notification Form for New Hire (W4) Reporting to: Department of Health and Human Services, Multistate Employer Registration, Office of Child Support Enforcement, Box 509, Randallstown MD 21133 or fax the completed form to: Multistate Employer Notification at (410) 277-9325.

The penalty for failure to timely report newly hired employees or for failure to file a report showing the required information is $20, multiplied by the number of employees not reported or the number of false or incomplete reports filed. However, if the failure is a result of a conspiracy between the employer and employee, the penalty will be $450, multiplied by the number of employees not reported or the number of false or incomplete reports filed.

Rules for specific types of employment

Seasonal employees and employees recalled from layoffs

When seasonal employees or employees recalled from layoffs return to work, if the break in service is 60 calendar days or less, then the employee does not have to be reported. If the break in service is more than 60 calendar days, the employee must be reported. New hire information must be reported as discussed above.

Temporary employees

Employers paying temporary employees directly must report them under this program. However, employers who purchase the employee services from a temporary service agency do not have to report these employees if they remain employed by the agency. They must be reported by the temporary service agency within 20 days from the hiring date, and are not required to be reported each time they are assigned to an employer-client. This also applies to employee leasing firms. These employees must be reported as new hires at the beginning of their engagement with the temporary agency, and again only if they were terminated by the agency or removed from its payroll records and then rehired.

Placement agencies

A placement agency is not responsible for reporting its individual clients because the clients are not employees of the agency. When the client obtains employment through the service of the placement agency, the employer is then responsible for reporting the newly hired employee.

Teachers and professional athletes

Teachers and other employees of educational institutions who are paid an annual salary are not considered to be rehired when they return to school in September. This is true even if they are not required to report to school for more than a 60-day period.

The above policy also applies to professional athletes and employees of professional teams who are paid an annual salary and work less than a full calendar year.

Questions and answers on reporting new hire information

1. **For whom must this information be reported?**

   All newly hired or rehired employees must be reported, whether hired for the first time or rehired (if previously employed but separated from such prior employment for 60 or more consecutive days), regardless of the type of employment, amount of remuneration, or status of the employer (such as for profit, not-for-profit, or government). Household employers must also report newly hired employees.

2. **For purposes of this program, who is considered to be an employee who must be reported?**

   Any newly hired or rehired person who works in New York State must be reported, whether or not the person is a resident of New York State, previously not employed by you or previously employed by you but separated from such prior employment for 60 or more consecutive days.

3. **What information must be reported for each newly hired or rehired employee?**

   The information required to be reported includes the employer's federal employer identification number (EIN), name, and address; the employee's social security number, name, address, hire date, and whether dependent health insurance benefits are available to the employee; and if so, the date the employee qualifies for those benefits.

4. **When must this information be filed?**

   The required information must be filed within 20 days of the hiring date. Employers who report electronically must report using two monthly transmissions (if needed) not less than 12 or more than 16 days apart.

   Note: If you have a newly hired **nonresident alien** visa employee, you have 20 calendar days to report the new hire starting from the date the employee receives a social security number (SSN) from the Social Security Administration. A nonresident alien employee should file for a social security number at the start of employment. You should exercise due diligence to have the employee provide the SSN when it is received. You cannot submit a report without an employee's SSN or use an Individual Taxpayer Identification Number (ITIN) or Resident Alien *(green card)* number in place of the SSN.

5. **What is the *hiring date* considered to be?**

   The *hiring date* is the first day compensated services are performed by an employee. This would be the first day any services are performed for which the employee will be paid wages, commissions, tips, or other compensation. For services based solely on commissions, this is the first day an employee working for commissions is eligible to earn commissions.

6. **Can employers substitute either manually- or computer-produced listings of newly hired employees in place of copies of W-4s and Forms IT-2104?**

   Yes. Employers may substitute listings or other written formats provided all the required information is included.

7. **Must the employer submit Form IT-2104 in addition to the federal Form W-4?**

   Yes, Form IT-2104 (or IT-2104-E) includes the required information regarding employee dependent health insurance benefits, and the hire date. Therefore, it must be submitted in place of, or in addition to, the federal Form W-4.

8. **The requirements state that an employee's name must be provided in the following order: first name, middle initial, last name. Can employers provide the name in a last name, first name, middle initial order?**

   Yes. The order of the name as stated in the requirements corresponds to the order specified for federal Form W-4. Employers who provide this information in a listing or other written format may provide the name in the alternative order.

9. **Must employees who discontinued services within 20 days of being hired still be reported?**

   Yes. These individuals were still employees and must be reported.

10. **Employers sometimes transfer employees working in other states to New York State. Must these employees be reported for the new hire reporting program?**

    No. These employees are not newly hired or rehired by the employer, but merely transferred from another state.

11. **Can employers submit a report of all new employees hired anywhere in the country with an indicator of the state in which they work?**

    Multistate employers who report **electronically** may designate one state (in which he or she has employees) to report newly hired employees. For employers who **do not** report electronically, only newly hired employees working in New York State must be reported, and employees who do not work at all in New York State must not be reported.

12. **Must all employees be reported as new hires in the case of takeovers, mergers, and consolidations by employers?**

    No, not if these employees have been previously reported through the quarterly wage reporting system.

13. **What do employers report for nonresident aliens who do not receive social security numbers?**

    Employees who legitimately do not have social security numbers still must be reported. Employers should enter **not required** in the space for social security number on their submission.

14. **What does an employer report for a newly hired employee who does not yet have a social security number?**

    You cannot submit a report without an employee's SSN or use an Individual Taxpayer Identification Number (ITIN) or Resident Alien *(green card)* number in place of the SSN.

    You have 20 calendar days to report a newly hired nonresident alien visa employee you hire starting from the date the employee receives an SSN from the Social Security Administration. A nonresident alien employee should file for a social security number at the start of employment. You should exercise due diligence to have the employee provide the SSN when it is received.

15. **Must the employee's physical address be reported, or is a post office box sufficient for an employee's home address? (For example, the employee may want a post office box for receiving a paycheck from the employer.)**

    A post office box is sufficient for an employee's home address, because we do not intend to modify the W-4 process. We recognize the main purpose of the W-4 is to provide federal income tax withholding information to employers.

16. **What date does the Tax Department use for determining timeliness — the postmark or the received date?**

    For reports delivered by the U.S. Postal Service, we use the postmark date for determining if the report was submitted in time. Taxpayers can use certain private delivery services, in addition to the U.S. Postal Service, with the assurance that reports mailed on time will be considered filed on time. For rules for determining the *postmark dates* when using a designated delivery service, refer to TSB-M-97(2)I and Publication 55, *Designated Private Delivery Services*. If neither the U.S. Postal Service nor a designated delivery service is used, we use the received date.

17. **How can an employer obtain a federal Employer Identification Number (EIN)?**

    See the IRS Web site at *www.irs.gov*. The IRS has a Web site where new employers can obtain a federal EIN. Employers must inform the New York State Tax Department when they obtain a federal EIN and use that number as their Withholding Tax Identification Number.

6. Need help?

New York State Tax Department

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Withholding Tax Information Center: (518) 485-6654

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

New York State Labor Department Unemployment Insurance Division

For addresses, telephone, and fax numbers to contact regarding unemployment insurance issues, see the section beginning on page 46. A list of available informational pamphlets covering a variety of unemployment insurance topics can be found on page 51.

Internet access — *www.labor.ny.gov*

State Insurance Fund

Workers' Compensation and Disability Benefits

From areas within the U.S., call 1 888 875-5790. From areas outside the U.S., call (518) 437-6400.

Internet access — *www.nysif.com*

Internal Revenue Service

For information, call toll free 1 800 829-1040. For forms and publications, call toll free 1 800 829-3676.

Internet access — *www.irs.gov*

U.S. Bureau of Citizenship and Immigration Services

For information, call toll free 1 800 375-5283.

Internet access — *www.uscis.gov*

Unemployment insurance issues — Where can I find the answers?

Visit our Web site at *www.labor.ny.gov* for online services, forms, and general information.

The following table provides addresses, telephone, and fax numbers for questions regarding specific unemployment insurance issues.

In addition to the telephone numbers below, **assistance with unemployment insurance matters is available** from 8:00 AM to 5:00 PM (eastern time), Monday through Friday, by calling toll free **1 888 899-8810.**

Issue	Write	Call
• Am I liable for unemployment insurance contributions? • Should this employee be covered for unemployment insurance? • I want to voluntarily cover the services of an employee. • The charge to my experience rating account is wrong. • I have questions regarding my right to request a hearing on any determination of liability made by the Department of Labor. • I have questions about the Shared Work Program (Shared work offers an alternative to laying off employees during temporary declines in business). • I have questions about wage reporting requirements.	NYS DEPARTMENT OF LABOR LIABILITY & DETERMINATION SECTION W A HARRIMAN CAMPUS ALBANY NY 12240-0322	Telephone: (518) 457-2635 Fax: (518) 485-6172
• I need Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.*	Access the NYS Department of Taxation and Finance's Web site at *www.tax.ny.gov*	Telephone: (518) 457-5431
• I need Form IA 12.3, *Record of Employment*, to give employees being separated. • I need a form to register and set up an unemployment insurance account. • I need additional forms or informational brochures. • I need to report change of business information.	NYS DEPARTMENT OF LABOR REGISTRATION SUBSECTION W A HARRIMAN CAMPUS ALBANY NY 12240-0339	Telephone: (518) 485-8589 Fax: (518) 485-8010
• I do not understand my UI rate. • How do voluntary payments affect my account? • When do I file my returns? • I received a notice of underpayment (or overpayment) with which I disagree.	NYS DEPARTMENT OF LABOR EMPLOYER ACCOUNT ADJUSTMENT SECTION W A HARRIMAN CAMPUS ALBANY NY 12240-0415	Telephone: (518) 457-2169 Fax: (518) 485-8602
• I do not believe my former employee should be eligible for unemployment insurance benefits. • I want to offer re-employment to one of my former employees who is receiving unemployment insurance benefits, but I am unable to contact the person.	NYS DEPARTMENT OF LABOR PO BOX 15130 ALBANY NY 12212-5130	Telephone: 1 888 890-5090
• I think one of my former employees is fraudulently receiving unemployment insurance benefits.	Call the telephone claims center at 1 888 890-5090 or write to NYS Department of Labor, PO Box 15130, Albany NY 12212-5130. You may also write or call an investigation section office. A directory of investigation section offices begins on page 48 of this guide.	
• I would like to report a possible incident of unemployment insurance fraud involving an employer.	Contact NYS Department of Labor, Liability & Determination Section, Specialized Services and Liability Unit, W A Harriman Campus, Bldg 12, Room 322, Albany NY 12240-0322. Telephone (518) 485-2144 between 8 AM and 4 PM. *or* Call our confidential 24 hour fraud number: 1 866 435-1499 You may also report employer fraud at *www.labor.ny.gov*	
• I have questions on enforcement actions taken to collect monies due including: • Filing a warrant • Bankruptcy proceedings • I have questions about Tax Offset. (A tax offset intercepts a state income tax refund or payment to vendors for state contracted services to pay for past due unemployment insurance debts.)	NYS DEPARTMENT OF LABOR CENTRAL ASSIGNMENT & COLLECTION SECTION W A HARRIMAN CAMPUS ALBANY NY 12240-0350	Telephone: (518) 457-5789 1 800 456-1015 Fax: (518) 457-8215 Bankruptcy Telephone: (518) 485-6100

Unemployment insurance issues — Where can I find the answers? *(continued)*

Issue	Write	Call
• I have a job opening I want to fill.	Access *I Love NY Talent Bank* at our Web site at *www.labor.ny.gov* to view resumes or post your job opening. For personal assistance, please call 1 800 HIRE 992.	
• I have questions regarding minimum wage, hours of work, overtime rates, etc.	NYS Department of Labor Division of Labor Standards Consult the nearest office listed under New York State Government in metropolitan area telephone directories.	
• I do not understand my liability under FUTA. • I need to get a Federal Employer Identification Number (FEIN).	Consult the nearest office of the **Internal Revenue Service** listed under United States Government in the telephone directory, or access the IRS Web site at *www.irs.gov* .	
• I have some inquiries of a general nature on unemployment insurance issues which do not fall into any of the above categories. (The offices shown in the opposite column can give you general information and refer you to the proper office to handle your specific problem.)	NYS DEPARTMENT OF LABOR W A HARRIMAN CAMPUS ALBANY NY 12240 *or* NYS DEPARTMENT OF LABOR NEW YORK EMPLOYER SERVICES 75 BROAD STREET NEW YORK NY 10004	Telephone: (518) 457-9000 Telephone: (212) 510-2818
• What is the New York State Department of Labor's Web site address?	*www.labor.ny.gov*	

Telephone claims center (TCC)

The unemployment insurance Telephone Claims Center (TCC) provides services related to unemployment insurance benefit claims. The services are described under *Benefit payments* on page 15 and *Review of notice of benefit entitlement or payment* on page 20. Call the TCC at 1 888 890-5090 or write to NYS Department of Labor, PO Box 15130, Albany NY 12212-5130.

Division of Employment Services offices

The Division of Employment Services performs a key role within the Workforce New York Partnership One Stop Centers to respond to the needs of businesses and job seekers. For additional information about recruitment, tax credits, and business incentives, call 1 800 HIRE 992 or access services at *www.labor.ny.gov.*

Unemployment insurance fraud investigation offices

Help stop unemployment insurance claimant fraud. Please report possible incidents of UI fraud by dialing our 24-hour number: 1 888 598-2077. You may also contact the nearest Investigation Section Office:

Investigation office	Address	Telephone
Albany	W A Harriman Campus Building 12, 12240	(518) 457-6089
Buffalo	290 Main Street, 14212	(716) 851-2501
Endicott	2001 Perimeter Road East Suite 3, 13760	(607) 741-4475
New York City	9 Bond Street Room 4200 Brooklyn 11201	(718) 613-3453
Patchogue	160 South Ocean Avenue 2nd floor, 11772	(631) 687-4840
Rochester	109 South Union Street, 14607	(585) 258-4560
Syracuse	450 South Salina Street, 13202	(315) 479-3400
Utica	State Office Building 207 Genesee Street, Room 601, 13501	(315) 793-2300
White Plains	120 Bloomingdale Road Room 229, 10605	(914) 997-9545

Unemployment insurance employer services offices

Unemployment insurance employer services offices provide a variety of services to employers, including general information on employer liability. Following is a list of unemployment insurance employer services offices.

Location	Address	Telephone
Bronx	2400 Halsey Street, 10461	(212) 775-3623
Brooklyn	9 Bond Street, 11201	(718) 613-3432
Buffalo	290 Main Street, 14202	(716) 851-2771
Endicott	2001 Perimeter Road East, 13760	(607) 741-4471
Hauppauge/Suffolk	State Office Building Veterans Memorial Highway, 11788	(631) 952-6506
Hicksville/Nassau	301 West Old Country Road, 11801	(516) 934-8570
New York City	Manhattan East 75 Broad Street, 10004	(212) 510-2825
	Manhattan West 75 Varick Street, 7th floor, 10013	(212) 775-3584
	Special Audit and Enforcement 75 Broad Street, 10004	(212) 510-2818
Plattsburgh	Building 194, US Oval, 12903	(518) 561-0430
Poughkeepsie	235 Main Street, 12601	(845) 473-2460
Queens	138-60 Barclay Avenue 2nd Floor, Flushing, 11354	(718) 321-6362
Rochester	109 South Union Street, 14607	(585) 258-4510
Syracuse	450 South Salina Street, 13202	(315) 479-3385
Troy	49 4th Street, 12180 *mailing address:* Building 12, Suite 2001 W A Harriman Campus Albany NY 12240	(518) 402-0208
Utica	207 Genesee Street, 13501	(315) 793-2304
White Plains	Room 230 120 Bloomingdale Road, 10605	(914) 997-8712

New York State withholding tax, wage reporting, and unemployment insurance forms*

Instructional forms		
Form:	**Form title:**	**Purpose:**
NYS-50	Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax	General information, instructions, and filing requirements for unemployment insurance, wage reporting, and withholding tax for New York State, New York City, and Yonkers
NYS-50-T-NYS	New York State Withholding Tax Tables and Methods	Presents withholding tax tables and methods
NYS-50-T-NYC	New York City Withholding Tax Tables and Methods	Presents withholding tax tables and methods
NYS-50-T-Y	Yonkers Withholding Tax Tables and Methods	Presents withholding tax tables and methods
	PrompTax Manual	Instructions for electronic filing and funds transfer program for withholding tax tables and methods. PrompTax filers may call (518) 457-2332 for information and assistance.
PUB-66	Electronic Reporting of Form NYS-1 Information	Describes filing requirements for submitters of Forms NYS-1 from multiple employers
PUB-69	Electronic Reporting of Quarterly Combined Wage and Withholding Tax Information	Detailed listing of requirements and specifications for electronic filing of employee wage and withholding information
PUB-72	Electronic Reporting of Form NYS-45 Information	Describes filing requirements for electronic submitters of Form NYS-45 quarterly returns for multiple employers
PUB-83	Specifications for Reproduction of New York State Employment Forms	Guidelines for reproducing and submitting substitute forms for approval
PUB-911	Electronic Reporting of Quarterly Wage and Withholding Tax Information Based on Federal Formats	Alternative filing format for electronic filing of employee wage and withholding information
TB-MU-350	Hiring Household Help	Describes various responsibilities and filing requirements for employers of household help
	Tax Department's *Jurisdiction/Rate Lookup by address* service	Used to determine if an employee's address is a New York City address for purposes of withholding New York City resident income tax, or a Yonkers address for purposes of withholding Yonkers resident income tax. A link to this service can be found on the Tax Department's Web site at *www.tax.ny.gov*.
Employer completed forms to be sent to New York State		
Form:	**Form title:**	**Purpose:**
NYS-100	New York State Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting	To register as a new employer for New York State unemployment insurance, withholding tax, and wage reporting purposes
NYS-1	Return of Tax Withheld	Filed with remittance of taxes withheld
NYS-45	Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return	To submit quarterly reporting of unemployment insurance contributions, withholding reconciliation information, wage reporting information, and annual employee/payee wage and withholding totals
NYS-45-ATT	Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return-Attachment	Attachment to Form NYS-45 to submit wage reporting and annual information for more than five employees/payees
NYS-45-X	Amended Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return	To make corrections to quarterly reporting of unemployment insurance contributions, withholding information, wage reporting information, and annual reporting of employee/payee wage and withholding totals
NYS-204	Request for Waiver from Filing Information via Web Upload	Request for waiver — call to request this form (see below)
NYS-209	Instructions for Electronic Reporting of Employees Hired or Rehired	
DTF-95	Business Tax Account Update	To report change in business name, identification number, address, telephone number, or owner/officer/responsible person information
DTF-96	Report of Address Change for Business Tax Accounts	To report only address changes; use Form DTF-95 to report other business account changes

To obtain withholding forms, access our Web site at *www.tax.ny.gov* or call (518) 457-5431.

* For a listing of unemployment insurance publications that are available for you to order, see *Unemployment insurance publications* on page 51.

Employee/payee completed forms		
Form:	**Form title:**	**Purpose:**
IT-2102.6	Certificate of Income Tax Withheld	To be filed by an employee as a substitute for federal Form W-2 **only** if every effort to get a federal Form W-2 from the employer has failed
IT-2104	Employee's Withholding Allowance Certificate	Completed by employees to claim a number of withholding allowances for New York State, New York City, and Yonkers
IT-2104.1	New York State, City of New York, and City of Yonkers Certificate of Nonresidence and Allocation of Withholding Tax	Completed by nonresident employees performing services within NYS to certify nonresidence and the percentage of services performed in NYS
IT-2104-E	Certificate of Exemption from Withholding	Completed by employees who are claiming exemption from withholding
IT-2104-IND	New York State Certificate of Exemption from Withholding (for Native Americans)	Completed by qualifying members of a tribe or nation to claim exemption from withholding
IT-2104-MS	New York State Withholding Exemption Certificate for Military Service Personnel	Completed by qualifying members of the armed forces to claim exemption from withholding
IT-2104-P	Annuitant's Request for Income Tax Withholding	Completed by recipients of annuities or pension payments to request withholding for New York State, New York City, or Yonkers

To obtain withholding forms, access our Web site at *www.tax.ny.gov* or call (518) 457-5431.

* For a listing of unemployment insurance publications that are available for you to order, see *Unemployment insurance publications* on page 51.

Unemployment insurance publications

A number of informational pamphlets on various unemployment insurance topics are available on the Department of Labor Web site *(www.labor.ny.gov)* or by request. To send for pamphlets, use the order form below and address it to:

NYS DEPARTMENT OF LABOR
REGISTRATION SUBSECTION
W A HARRIMAN CAMPUS
ALBANY NY 12240

Or telephone: 1 888 899-8810 or (518) 485-8589; or fax: (518) 485-8010

IA 12.3	Record of Employment
IA 15	Change of Business Information
IA 116.3	Determining Jurisdiction of Employment When Services are Performed in a Number of States
IA 318.11	Agricultural Employment
IA 318.12	Experience Rating
IA 318.13	Benefit Reimbursement
IA 318.14	Independent Contractors
IA 318.15	Reporting Meals, Lodging, Tips and Other Forms of Remuneration
IA 318.16	Important Information for Organized Camps
IA 318.17	Guidelines for Determining Worker Status: Performing Artists
IA 318.18	Guidelines for Determining Worker Status: Insurance Sales Industry
IA 318.19	Guidelines for Determining Worker Status: Newspaper and Shopping Guide Publishing Industry
IA 318.20	Guidelines for Determining Worker Status: Translating and Interpreting Industry
IA 318.21	Guidelines for Determining Worker Status: Tour Guide Industry
IA 318.22	Guidelines for Determining Worker Status: Van Operators in the Moving Industry
IA 318.23	Guidelines for Determining Worker Status: Magazine Publishing Industry
IA 318.24	Guidelines for Determining Worker Status: Messenger Courier Industry
IA 318.60	Important Notice to Employers How to Keep Your Unemployment Insurance Costs Down
IA 318 D	Householder's Guide for Unemployment Insurance
IA 318 IT	Unemployment Insurance Coverage for Indian Tribes
SW 1	Shared Work

(Detach at this line)

Pamphlet order form

Pamphlet no.	Title	Quantity

• List pamphlet number, title, and quantity requested in boxes above
• Enter business name and address information in space provided below

Employer registration no. _____ FEIN _____
Name of business _____
Address _____
City _____ State _____ ZIP code _____

NYS-50 (1/14)

NYS TAX DEPARTMENT
W A HARRIMAN CAMPUS
ALBANY NY 12227