

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82 (11) I
Income Tax
December 31, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1821020A

On October 20, 1982 a Petition for Advisory Opinion was received from the New York City Department of Finance, Payroll Division, 1 Centre Street, New York, New York 10007.

Petitioner inquires as to whether its understanding of its obligations as an employer to withhold State and New York City personal income tax, as embodied in the following statement, is correct:

"An employee is allowed to claim the same number of exemptions for New York State and City of New York income tax withholding as for Federal income tax withholding purposes (Section 671(c)(1) of the Tax Law). However, a Federal exemption certificate is not binding for State and City income tax withholding purposes (Reg. Section 160.3(b)). Employees who wish to claim exemption from Federal income tax withholding but not State and City must file State form IT-2104 indicating a specific number of State and City withholding exemptions. Employees who claim exemption from Federal income tax withholding and wish to also claim exemption from State and City income tax withholding must file State form IT-2104E.

"An employer has the right to deny or revoke the State and City exemption certificate of any employee who does not qualify for exemption under Section 671(a)(3) or Section 601(a)(2) of the Tax Law. Revocation must be in the form of a written notice. An employee must then file State form IT-2104, indicating a specific number of State and City exemptions to which he is entitled. If an employee does not qualify for exemption under Section 671(a)(3) or 601(a)(2) and refuses to indicate a specific number of withholding exemptions for State and City income tax purposes, the employer should withhold on the basis of one exemption until the employee completes an IT-2104 specifying the number of exemptions."

Petitioner's statement is generally correct, with the following exceptions:

1. An employee may claim the same number of exemptions for New York State and City personal income tax withholding as he or she is allowed to claim for Federal purposes, less the number of such Federal withholding exemptions based on entitlement to Federal tax credits, plus the number of withholding exemptions based on the number of credits against New York State personal income tax to which the employee is entitled. Tax Law, §671(c)(1); 20 NYCRR 160.4(d)(1).

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2. Upon revocation of a State and New York City exemption certificate, an employee is required to file a Form IT-2104 only if (a) he or she has failed to provide the employer with a Federal form W-4, or has submitted such form claiming an exemption from withholding, or (b) he or she wishes to claim a different number of exemptions for State and New York City purposes than is indicated on the Federal form W-4. If the employee filed a Federal form W-4, other than one claiming an exemption from withholding, the employer should withhold State and New York City income taxes based on the facts included therein.

3. If the employee does not qualify for an exemption from State and New York City withholding requirements and has filed neither a Federal form W-4 nor a State form IT-2104, the employer should withhold on the basis of zero withholding exemptions. 20 NYCRR 160.1(b); 26 CFR 31.3401(e)-1.

DATED: December 23, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau