Department of Taxation and Finance

Instructions for Form IT-221
Disability Income Exclusion

IT-221-I

General information

Purpose of Form IT-221

Use Form IT-221 to determine any amount of disability income that you could have excluded (subtracted) from federal adjusted gross income (FAGI) based on Internal Revenue Code §105(d) as it was in effect before January 1, 1984. You may subract this amount from your New York State taxable income. **However, the total** of the disability income exclusion and any pension and annuity income exclusion you claim **cannot exceed $20,000.** (If married, the total of each spouse's disability income exclusion and pension and annuity income exclusion cannot exceed $20,000.)

Who can exclude disability income

If you file a New York State resident or nonresident and part-year resident income tax return, you may use this form to exclude all or part of your disability pay if you meet **all** of the following tests:

- you received disability pay; **and**
- you were not yet 65 when your tax year ended; **and**
- you retired on disability and were permanently and totally disabled when you retired (See *Definition of permanent and total disability* below. Also see *Physician's statement* on page 2 of Form IT-221); **and**
- on January 1 of this tax year, you had not yet reached the age when your employer's retirement program would have required you to retire; **and**
- you were married at the end of this tax year, and marked filing status ③, *Married filing separate return,* on your federal and New York State returns, and you and your spouse lived apart during the **entire** tax year. If this is the case, mark an ***X*** in the appropriate box.

If you meet these tests, you may take this exclusion until the earlier of (1) the first day of the tax year in which you turn 65; or (2) the date you reach the age when your employer's retirement program would have required you to retire.

Definition of *permanent and total disability*

A person is permanently and totally disabled when:

- they cannot engage in any substantial gainful activity because of a physical or mental condition; **and**
- a physician determines that the condition (1) has lasted or can be expected to last continuously for at least a year; or (2) can be expected to lead to death.

Examples 1 through 3 below show substantial gainful activity. If you engaged in substantial gainful activity as in these examples, you cannot take the disability income exclusion.

Example 1: *A person worked at a hotel as a desk clerk. After retiring on disability, they got a desk clerk job at another hotel. The person does all the duties of the job and is paid more than the minimum wage. Because the person does the job on the same terms as the other desk clerks and is paid more than the minimum wage, they are considered engaged in a substantial gainful activity. They cannot take the disability income exclusion.*

Example 2: *A person retired on disability as a sales clerk. They now work as a full-time babysitter for more than the minimum wage. Even though the person does different work, they babysit on ordinary terms for more than the minimum wage. They cannot take the disability income exclusion.*

Example 3: *A person retired on disability and now works at an easier job in a full-time competitive work situation. They earn half of what they used to but are paid more than the minimum wage. They are considered engaged in a substantial gainful activity. They cannot take the disability income exclusion.*

The following example shows a person who might **not** be considered to be engaged in substantial gainful activity.

Example 4: *A person who retired on disability took a job with a former employer on a trial basis. The purpose of the job was to see if they could do the work. During the trial period, the person was paid at a rate equal to the minimum wage. However, because of their disability, they were given only light duties of a nonproductive, make-work nature. Unless the activity is both substantial and gainful, the person is not engaged in a substantial gainful activity. The activity was gainful because the person was paid at a rate at or above minimum wage. However, the activity was not substantial because the duties were of a nonproductive, make-work nature. Therefore, these facts do not by themselves establish the person's ability to engage in substantial gainful activity.*

Specific instructions

If you need help contacting the Tax Department or for the *Privacy notification,* see the instructions for your tax return.

Excludable disability pay

Lines 2 and 3: You may exclude either your actual weekly disability pay or $100 a week, whichever is less. This table shows how to calculate your weekly disability pay.

Pay period	Your weekly pay is the following part of what you receive each pay period
Weekly	All
Every two weeks	Half
Twice a month	Multiply your pay by 24, and divide the result by 52
Each month	Multiply your pay by 12, and divide the result by 52
Other	Divide your yearly pay by 52

Line 4: If you received disability pay for part of a week, follow the steps below.

Step 1: Divide $100 by the number of days per week you normally worked before you retired.

Step 2: Divide the disability pay you received by the number of days it covered in that week.

Step 3: Compare the Step 1 and Step 2 amounts. The daily rate for your exclusion for the week is based on the smaller amount.

Step 4: Multiply your daily rate by the number of days you received disability pay in the short week. The result is your exclusion for that week.

Step 5: Add your exclusion for that week to your exclusion for any other short weeks. Enter the total on line 4.

Disability payments are made for part of a week when one of the following happens after the first day of the taxpayer's normal workweek:

- the disability retirement begins
- the disability retirement ends because the taxpayer reaches required retirement age
- the taxpayer dies

Limit on exclusion

Generally, the most you can exclude is $5,200. This exclusion goes down, dollar for dollar, by any amount over $15,000 on line 7. That line shows your FAGI.

Generally, no exclusion is left if line 7 is:

- $20,200 or more, and one person could take the exclusion; **or**
- $25,400 or more, and both spouses could take the exclusion.

Line 11: Enter the amount from line 10 in Column A. This is your disability income exclusion. **The total** of your disability income exclusion and any pension and annuity income exclusion you claim **cannot exceed $20,000.** If married, the total of each spouse's disability income exclusion and pension and annuity income exclusion cannot exceed $20,000. You cannot claim any unused part of your spouse's exclusion.

If both spouses received disability pay, you must prorate the amount you entered on line 10 based on the amount of disability pay received by each spouse (line 1) and entered on line 11 in the appropriate columns.

Example 5: *You received disability income of $6,000 and your spouse received disability income of $4,000. The amount you entered on line 10 is $9,200. The amount each spouse must enter in the appropriate column on line 11 is calculated as follows:*

You:		***Your spouse:***	
$\frac{\$\ 6{,}000}{\$10{,}000}$	× *9,200 = $5,520*	$\frac{\$\ 4{,}000}{\$10{,}000}$	× *9,200 = $3,680*

Add the amounts on line 11, columns A and B. Transfer the total to Form IT-225, *New York State Modifications*, line 10, *Total amount* column and enter subtraction modification ***S-124*** in the *Number* column.

If you are claiming this exclusion, you must submit Form IT-221 with the return you file.