

WHAT YOU NEED TO KNOW IF YOU HIRE HOUSEHOLD HELP

For tax year 2011



The information presented is current as of this publication's print date. Visit our Web site at www.tax.ny.gov for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Introduction

If you hire household help (domestic help), such as a housekeeper, babysitter, or caretaker, you take on certain responsibilities as an employer. As an employer, you may need to pay state and federal employment taxes. This publication provides a summary of reporting and filing requirements and a description of the forms you may need to use when you hire household help.

If you contract with a service to provide household help or if the worker you hire is self-employed, you are **not** considered an employer and are not subject to employer filing requirements. However, if you contract with a service or hire someone who is self-employed to perform a job that constitutes a repair, maintenance, or installation service, you may be required to pay sales tax (see *Sales tax on repair and maintenance services performed in and around your home* on page 11).

For federal information, including information on determining if the person(s) you hire is considered your employee, visit the Internal Revenue Service (IRS) Web site (www.irs.gov) and see Publication 926, *Household Employer's Tax Guide*.

New for 2011 – Changes to wage reporting and new hire reporting

Chapter 182 of the Laws of 2010 amended the Tax Law with regards to the state directory of new hires and the statewide wage reporting system. Effective July 15, 2011, employers will be required to provide certain information on the availability of dependent health insurance benefits to their employees.

For more information, see *Reporting newly hired or rehired employees* on page 6 and *New York State wage reporting* on page 9.

Is your employee eligible to work in the U.S.?

The Immigration Reform and Control Act of 1986 requires employers to verify that new employees are eligible to work in the United States. If you employ someone to do work in your home on a regular basis (once a week, for instance), you must maintain records showing that your household employee is eligible to work in the United States.

You and your employee must complete the United States Citizenship and Immigration Services (USCIS) Form I-9, *Employment Eligibility Verification*, no later than the first day of work. You must keep this form for three years after the date the employee is hired or one year after the date that employment ends, whichever is later.

Form I-9 does **not** need to be completed for a person:

- hired before November 7, 1986, and has been continuously employed by the same employer;

- providing domestic services in a private household that are sporadic, irregular, or intermittent;
- providing services as an independent contractor; or
- providing services under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for Form I-9 purposes; for example, a temporary employment agency.)

You can get Form I-9 and information on immigration laws, regulations, and procedures from the USCIS Web site (www.uscis.gov) or by calling the USCIS National Customer Service Center toll-free at 1 800 375-5283.

Federal employer identification number

You **must** have a federal employer identification number (EIN) if you pay wages to one or more household employees.

You can obtain your federal EIN by several methods:

- online (www.irs.gov);
- through the mail by completing federal Form SS-4, *Application for Employer Identification Number*;
- by calling the IRS Business and Specialty Tax Line at 1 800 829-4933; or
- by faxing a completed Form SS-4 to the appropriate Fax number (see the instructions for Form SS-4).

You should obtain your federal EIN before you register as an employer with New York State (see *New employer registration* on page 8).

Reporting newly hired or rehired employees

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 the state **within 20 days** of the hiring date.

The hiring date is the first day compensated services are performed by your employee. This would be the first day any services are performed for which your employee will be paid wages or other compensation.

You must provide the following information for each newly hired employee:

- employee name (first, middle initial, last);
- employee address (street, city, state, and ZIP code);

- employee social security number;
- employer name;
- employer address (street, city, state, and ZIP code);
- your employer identification number (assigned by IRS); and
- effective July 15, 2011, you are required to report if dependent health insurance benefits are available to a newly hired or rehired employee and if so, the date the employee qualifies for the benefits. (The method(s) for reporting this additional information on newly hired or rehired employees will be available on our Web site prior to July 15, 2011.)

You can report new hire information online using the Tax Department New Hire Web site (www.nysnewhire.com).

You can also report the required information by submitting a completed and legible copy of your employee's Form IT-2104, *Employee's Withholding Allowance Certificate*; Form IT-2104-E, *Certificate of Exemption from Withholding*; federal Form W-4, *Employee's Withholding Allowance Certificate*, (available on the IRS Web site (www.irs.gov)); or an equivalent form you develop, by mail to:

New York State Tax Department
New Hire Notification
PO Box 15119
Albany, NY 12212-5119

or by fax to (518) 320-1080.

Note: Effective July 15, 2011, if you choose to submit a copy of your employee's federal Form W-4, you will also be required to submit additional information to show the availability of dependent health insurance benefits to your employee.

For more information, visit Tax Department New Hire Web site (www.nysnewhire.com).

Unemployment insurance, wage reporting, and withholding tax

If you hire an employee, you are subject to the laws requiring the withholding of federal social security taxes, as well as federal and state income taxes. You may also be responsible for paying for unemployment insurance and for workers' compensation and disability insurance.

If you are liable for New York State unemployment insurance, or if you and your employee agree to withhold New York State income tax from your

employee's wages, you must file Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*.

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

<u>Quarter</u>	<u>Due Date</u>
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

Wage reporting information for the last calendar quarter of the year and the annual withholding tax reconciliation information must be filed no later than January 31 of the next year. When a due date falls on a Saturday, Sunday, or legal holiday, returns are due on the next business day.

You may Web file Form NYS-45 electronically through the Tax Department Web site.

Failure to provide the required information or to file the required forms may result in civil or criminal penalties, or both.

The following sections provide general information on registering as an employer with New York State, New York State unemployment insurance, New York State wage reporting, and New York State income tax withholding.

For additional information (including New York City and Yonkers withholding tax requirements, if applicable), visit our Web site or call our Withholding Tax Information Center at (518) 485-6654.

New employer registration

New employers can obtain information on how to register for unemployment insurance, wage reporting, and withholding tax by contacting either the New York State Department of Labor (DOL) or the New York State Tax Department. You should obtain your federal employer identification number (EIN) before you register as an employer with New York State.

- **New York State Department of Labor**

Internet access: www.labor.ny.gov

Telephone assistance: is available from 8:30 a.m. to 4:25 p.m. (Eastern time) Monday through Friday by calling (518) 485-8589.

- **New York State Tax Department**

Internet access: www.tax.ny.gov

Telephone assistance is available from 8:00 a.m. to 5:00 p.m. (Eastern time), Monday through Friday by calling (518) 485-6654.

**New York State
unemployment
insurance**

If you pay cash wages totaling \$500 or more in a calendar quarter to one or more persons employed as a household employee in your home, you are required to pay New York State unemployment insurance taxes.

If you pay less than \$500 cash wages in a calendar quarter, you may choose to cover your employee(s) for unemployment insurance.

If you are liable for unemployment insurance taxes, each quarter you must file Form NYS-45 and Form NYS-45-ATT, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return – Attachment*, if applicable.

Note: You may also be required to pay federal unemployment taxes. Contact the IRS for federal information.

For additional information on New York State unemployment insurance, see Department of Labor Publication IA 318D, *Householder’s Guide for Unemployment Insurance*, or you may call the Department of Labor at 1 888 899-8810.

You can obtain Publication IA 318D online (www.labor.ny.gov) or by writing to:

New York State Department of Labor
Registration Subsection
WA Harriman Campus
Albany, NY 12240-0339

**New York State wage
reporting**

If you are liable for New York State unemployment insurance contributions, you must file employee **wage reporting** information each calendar quarter using Form NYS-45.

Note: Effective July 15, 2011, you must report if dependent health insurance benefits are available to your employees when submitting your quarterly wage reporting information. Form NYS-45 will be redesigned to accommodate this information beginning with the 3rd quarter of 2011.

**New York State
withholding tax**

Wages you pay to your household help are taxable income to that employee. Your employee must report those wages on his or her federal and state personal income tax returns.

Withholding income tax (federal or New York State) from wages paid to household employees is **voluntary** on your part and your employee. If you and your employee voluntarily agree, federal or New York State income tax, or both, may be withheld. In addition, you may agree to withhold for New York City or Yonkers income tax, or both.

If you and your employee agree to withhold New York State income tax from your employee's wages, your employee should use Form IT-2104, *Employee's Withholding Allowance Certificate and Instructions*, to determine the number of withholding allowances to claim for withholding tax purposes. You will then use this information to determine the amount of tax to withhold using Publication NYS-50-T, *New York State, New York City, and Yonkers Withholding Tax Tables and Methods*.

If you withhold New York State income tax from your employee, you must file Form NYS-45 each calendar quarter.

If you withhold New York State income tax from your employee(s) during a calendar quarter, you may also be required to file Form NYS-1, *Return of Tax Withheld*. You must file Form NYS-1 and remit the total tax withheld after each pay period that causes the total accumulated tax required to be withheld to equal or exceed \$700. For more information, see the instructions for Form NYS-1.

Metropolitan commuter transportation mobility tax (MCTMT)

The MCTMT is imposed on certain employers and self-employed individuals engaging in business within the metropolitan commuter transportation district.

For purposes of the MCTMT, *employer* means any employer that is **required** by section 671 of the Tax Law to deduct and withhold New York State income tax from wages paid to employees, and that has a payroll expense in excess of \$2,500 in any calendar quarter. However, the following employers are not subject to the MCTMT: an agency or instrumentality of the United States; the United Nations; or an interstate agency or public corporation created under an agreement or compact with another state or Canada.

Withholding income tax (federal or New York State) from wages paid to household employees is **voluntary** on your part and your household employee (see *New York State withholding tax* on page 9). Therefore, the Tax Department has determined that employers of household help **are not** subject to the Metropolitan Commuter Transportation Mobility Tax (MCTMT).

For more information on the MCTMT, visit our Web site.

Workers' compensation and disability benefits

If you employ one (or more) household employee(s) who works for you 40 hours or more per week **or** who resides on your premises, you are subject to the Workers' Compensation Law and the Disability Benefits Law.

Persons you hire to do yard work or casual chores in and about your home on a part-time basis are not covered by the Workers' Compensation Law

and the Disability Benefits Law. However, coverage is required when you employ a minor to operate power-driven machinery, including a power lawnmower. You may voluntarily purchase insurance for employees not protected by the law.

For more information, visit the New York State Workers Compensation Board Web site (www.wcb.state.ny.us) or call toll free 1 877 632-4996.

Social security and medicare

Although you are not required to withhold income tax on wages paid to a household employee, you may be liable for your household employee's federal social security and medicare taxes.

For more information on federal income tax withholding and social security and medicare taxes, see IRS Publication 15, (Circular E), *Employer's Tax Guide*.

Sales tax on repair and maintenance services performed in and around your home

Generally, repair and maintenance services performed in and around your home are subject to sales tax. These taxable services include:

- maintaining, servicing, and repairing tangible personal property (for example, having your furnace serviced or your dishwasher repaired); and
- maintaining, servicing, and repairing real property (for example, roof repairs, lawn maintenance, snowplowing, cleaning services, and trash removal services).

However, these services are not subject to sales tax if any of the following conditions are met:

- The service qualifies as a capital improvement and you gave the person performing the service a properly completed Form ST-124, *Certificate of Capital Improvement*. Examples of capital improvements include the installation of a new furnace or the installation of a new blacktop driveway. For more information on capital improvements see Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.
- The services are performed by your employee.
- The services are performed by a person who does not perform similar services for the public as part of a regular trade or business. For example, you pay your neighbor to mow your lawn while you are on vacation and your neighbor does not regularly mow other people's lawns, or you pay your niece to help clean your house and your niece does not regularly clean other people's houses.

People or businesses that perform taxable services on your property should charge and collect sales tax when you pay for those services. However, if the person or business does not charge and collect the tax, it is your responsibility to pay the tax directly to the Tax Department. You can do this by including the sales tax due on your New York State income tax return, or you can file Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*, with the department.

For more information, see Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*.

New York State Tax Department

Online Services

**Create an Online Services
account and log in to:**

- make payments,
- file certain returns,
- view account information,
and more.

Access is available 24 hours a day, 7 days
a week (except for scheduled maintenance).

www.tax.ny.gov

Need help?



Internet access: www.tax.ny.gov

Get answers to your questions; check your refund status; check your estimated tax account; download forms and publications; get tax updates and other information.



Telephone assistance is available from 8:30 A.M. to 4:30 P.M. (eastern time), Monday through Friday.

Refund status: (518) 457-5149
(Automated service for refund status is available 24 hours a day, 7 days a week.)

Personal Income Tax Information Center: (518) 457-5181

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.