

Frequently Asked Questions about Filing Requirements, Residency, and Telecommuting for New York State Personal Income Tax

This page summarizes current New York state law and guidance relating to frequently asked questions due to the COVID-19 pandemic.

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Do I need to file a New York State personal income tax return?

Before you can decide if you need to file an income tax return with New York State, you first need to determine if you are a resident, nonresident, or part-year resident.

Generally, you must file a New York State [resident income tax return](#) if you are a New York State resident and meet any of the following conditions:

- You have to file a federal return.
- You did not have to file a federal return but your federal adjusted gross income plus New York additions was more than \$4,000 (\$3,100 if you are single and can be claimed as a dependent on another taxpayer's federal return).
- You want to claim a refund of any New York State, New York City, or Yonkers income taxes withheld from your pay.
- You want to claim any refundable or carryover credits.

You may still have to file a New York State return if you're a [part-year resident](#) of New York or a [nonresident](#) with income from New York State sources.

How do I know if I am a resident of New York State for income tax purposes?

Generally, you are considered a [New York State resident](#) for income tax purposes if you are [domiciled](#) in the state. For most people this is straightforward: the primary residence where you live is both your state of domicile and the state in which you are a resident for tax purposes. However, you can still be considered a resident of New York State for income tax purposes even if you are not domiciled in the state. (See below, “Can I be a resident of New York State if my domicile is elsewhere?”)

What is my domicile?

The terms [domicile](#) and *residence* are often used synonymously, but for New York State income tax purposes, the two terms have distinctly different meanings.

In general, your domicile is your permanent and primary residence that you intend to return to and/or remain in after being away (for example, on vacation, business assignments, educational leave, or military assignment).

Residence means a *place of abode*. An individual may have several residences—e.g., houses, apartments, condos, and/or other places to live or physical dwellings in which they reside—and some may be in different states.

However, while you may have multiple residences, you can only have one domicile. An individual may live in a certain residence for a temporary period of time, which could be an extended period of time, but if it’s not the place they ultimately attach themselves to and intend to return to, it’s still not their domicile.

Furthermore, your New York domicile does not change until you can demonstrate with clear and convincing evidence that you have abandoned your New York domicile and established a new domicile outside New York State. This means shifting the focus of your life to the new location. It is not enough simply to file a certificate of domicile or register to vote in the new location. All aspects of a person’s life are considered in determining whether a person’s domicile has changed.

Can I be a resident of New York State if my domicile is elsewhere?

You may be subject to tax as a resident even if your domicile is not New York.

You are a New York State resident if your domicile is New York State OR:

- you maintain a permanent place of abode in New York State for substantially all of the taxable year; **and**
- you spend 184 days or more in New York State during the taxable year. Any part of a day is a day for this purpose, and you do not need to be present at the permanent place of abode for the day to count as a day in New York.

In general, a permanent place of abode is a building or structure where a person can live that you permanently maintain and is suitable for year-round use. It does not matter whether you own it or not.

For more information see:

- [Do I need to file an income tax return?](#)
- [Income tax definitions](#)
- Tax Bulletin [TB-IT-690](#), *Permanent Place of Abode*
- [TSB-M-18\(4\)](#), *Summary of Personal Income Tax Changes Enacted in the 2018-2019 Budget Bill*
- [TSB-M-09\(15\)](#), *Amendment to the Definition of Permanent Place of Abode in the Personal Income Tax Regulations Relating to Certain Undergraduate Students*
- [IT-201-1](#), *Instructions for Form IT-201 Full-Year Resident Income Tax Return*
- [IT-203-1](#), *Instructions for Form IT-203 Nonresident and Part-Year Resident Income Tax Return*
- [Nonresident Audit Guidelines](#)

If I'm not domiciled in New York and I'm not a resident, do I owe New York income tax?

If you do not meet the requirements to be a resident, you may still owe New York tax as a [nonresident](#) if you have income from New York sources.

If you were a resident for only a [portion](#) of the year, your income subject to tax will be split, with part taxed according to resident rules and the remainder subject to nonresident rules. To compute tax, you first calculate your tax as if you were a full year resident, then determine how much to allocate to New York by an income percentage based on your New York source income and your federal income.

What's the difference between filing as resident vs. nonresident?

As a resident, you pay state tax (and city tax if a New York City or Yonkers resident) on all your income no matter where it is earned. As a nonresident, you only pay tax on New York source income, which includes earnings from work performed in New York State, and income from real property located in the state. If you are a nonresident, you are not liable for New York City personal income tax, but may be

subject to Yonkers nonresident earning tax if your income is sourced to the city of Yonkers.

For a list of what does and does not constitute New York source income, plus other information, see:

- Tax Bulletin [TB-IT-615](#), *New York Source Income of Nonresident Individuals, Estates, and Trusts, and Part-Year Resident Individuals and Trusts*
- Tax Bulletin [TB-IT-620](#), *New York Source Income-Sole Proprietorships and Partnerships*
- [IT-203-I](#), *Instructions for Form IT-203 Nonresident and Part-Year Resident Income Tax Return*
- [TSB-M-18\(1\)I](#), *Definition of New York Source Income of Nonresident Expanded*
- [TSB-M-18\(2\)I](#), *Nonresident Partner's Treatment of Gain or Loss on Certain Sales or Transfers of a Partnership or Membership Interest*
- [TSB-M-15\(7\)C, \(6\)I](#), *Impact of New York State Corporate Tax Reform on New York S Corporations and their Nonresident and Part-Year Resident Shareholders*
- [TSB-M-10\(9\)I](#), *Income Received by a Nonresident Related to a Business, Trade, Profession, or Occupation Previously Carried on Within New York State*
- [TSB-M-09\(5\)I](#), *Amendment to the Definition of New York Source Income of a Nonresident Individual*

My primary office is inside New York State, but I am telecommuting from outside of the state due to the COVID-19 pandemic. Do I owe New York taxes on the income I earn while telecommuting?

If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location.

There are a [number of factors](#) that determine whether your employer has established a bona fide employer office at your telecommuting location. In general, unless your employer specifically acted to establish a bona fide employer office at your telecommuting location, you will continue to owe New York State income tax on income earned while telecommuting.

If I live in New York but work in another state, am I taxed twice?

A person who lives in one state but works in another may have tax liability in both states, but typically will receive a tax credit in their state of residence to eliminate double taxation of that income.

If you were a full-year or part-year resident of New York State and you had income sourced to and taxed by another state you may claim a [nonrefundable resident credit](#) against your New York State tax. This credit is allowable only for the portion of the tax that applies to income sourced to and taxed by the other taxing authority while you were a New York State resident.

For more information see, [IT-112-R-I](#), *Instructions for Form IT-112-R New York State Resident Credit*.

What are the rules for New York City residency?

The requirements to be a New York City resident are the same as those needed to be a New York State resident. You are a New York City resident if:

- your domicile is New York City; **or**
- you have a permanent place of abode there and you spend 184 days or more in the city.

All city residents' income, no matter where it is earned, is subject to New York City personal income tax. Nonresidents of New York City are not liable for New York City personal income tax.

The rules regarding New York City domicile are also the same as for New York State domicile. If your permanent and primary residence that you intend to return to and/or remain in after being away is located in one of the five boroughs of New York City, it is considered a New York City domicile.

Your New York City domicile does not change until you can demonstrate with clear and convincing evidence that you have abandoned your city domicile and established a new domicile outside New York City. Even if you live in a location outside of the city for a period of time, if it's not the place you attach yourself to and intend to return to, it's not your domicile. Your domicile will still be New York City and you will still be considered a New York City resident.

For more information see, [IT-201-I](#), *Instructions for Form IT-201 Full-Year Resident Income Tax Return*.

What are the rules for Yonkers residency?

For income taxes purposes, your Yonkers resident status depends on where you were domiciled and where you maintained a permanent place of abode during the taxable year. Similar to New York State and New York City requirements, if your domicile is Yonkers you are considered a Yonkers resident. If you maintain a permanent place of abode in Yonkers and spend 184 days or more in Yonkers, you are considered a Yonkers resident.

The rules regarding Yonkers domicile are also the same as for New York State domicile. You can only have one domicile. Unless you can demonstrate with clear and convincing evidence that you have abandoned your Yonkers domicile and established a new domicile outside Yonkers, your domicile remains Yonkers.

Yonkers residents are subject to a Yonkers resident income tax surcharge that is computed and reported on their New York State tax return.

Nonresidents of Yonkers may be subject to the Yonkers nonresident earnings tax if they:

- earn wages or carry on a trade or business there; **or**
- are a member of a partnership that carries on a trade or business there.

For more information see:

- [IT-201-I](#), *Instructions for Form IT-201 Full-Year Resident Income Tax Return*
- [IT-203-I](#), *Instructions for Form IT-203 Nonresident and Part-Year Resident Income Tax Return*

Are there different rules for active duty military personnel?

If your domicile was not New York State when you entered the military, but you were assigned to duty in New York State, you do not become a New York State resident even if you have a permanent place of abode here. You are a nonresident and your military pay is not subject to New York State income tax.

For more information see:

- [Information for military personnel & veterans](#)
- [Publication 361](#), *New York State Income Tax Information for Military Personnel and Veterans*
- [TSM-M-19\(3\)I](#), *Veterans Benefits and Transition Act of 2018*
- [TSB-M-10\(1\)I](#), *Military Spouses Residency Relief Act*