

Memo

To: / Location: LiFTS Partners and Managers
From: / Location: Joseph A. Bailey Jr. and Brian W. Masie / New York
Date: January 5, 2006
Subject: Updated Exemption Certificates for NYS Nonresident Withholding

EXECUTIVE SUMMARY

The New York State Department of Taxation and Finance ("Department") issued new forms that must be completed and signed by each nonresident person or entity claiming exemption from the New York State withholding rules. All existing certificates expire February 1, 2006. The new certificates apply to tax years 2006 & 2007 and will expire on February 1, 2008.

Discussion

Reference is made to our prior Law Firm Tax Services ("LiFTS") Memo dated November 24, 2003, in which we discussed the process for nonresident individual and C corporate partners, members or shareholders to claim exemptions or waivers from the New York State withholding tax rules.

Briefly, New York State requires withholding by law firms for nonresident partners. However, a law firm can avoid this administrative burden by having the nonresident partners submit completed exemption certificates (Form IT-2658-E for nonresident individuals and Form CT-2658-E for nonresident corporate partners). The certificate confirms that each nonresident partner will comply with the applicable New York State estimated tax payment rules. While the law firm is not required to file this form with the Department, it must keep it on file and present it to the Department upon request.

Since each exemption certificate only covers a limited period, each New York State nonresident partner who qualifies for exemption (and wants to avoid NYS withholding) must complete a new version of Form IT-2658-E or CT-2658-E and submit it to the law firm before February 1, 2006.

A nonresident partner is required to file Form IT-2658-E or Form CT-2658-E with the law firm as soon as the partner qualifies for exemption.¹ Filing the form will provide a two-year exemption for tax years 2006 and 2007. The exemption expires on February 1, 2008, at which time a new Form IT-2658-E or CT-2858-E must be completed. PDF files of the forms are attached to this memo.

If you have any questions regarding the New York State withholding requirements or claims for exemption, please contact Joseph Bailey at (646) 471-0860 or Brian Masie at (646) 471-6029.

¹ Nonresident individual partners who participate in a New York State Group Return or whose estimated tax is \$300 or less are automatically exempt from the nonresident withholding rules and are not required to file Form IT-2658-E. Any nonresident individual partner who does not meet one of the automatic exemptions may claim exemption by filing Form IT-2658-E.