New York State Department of Taxation and Finance

Instructions for Form IT-203-GR

Group Return for Nonresident Partners

IT-203-GR-I

General information

A partnership, including a limited liability partnership, limited liability investment company, limited liability trust company, or limited liability company that is treated as a partnership for federal income tax purposes, that has any income derived from or connected with New York sources, may be granted approval to file Form IT-203-GR, *Group Return for Nonresident Partners.* This form may be filed only if the partnership has 11 or more qualified nonresident partners or members (see below) who elect to file on a group return for each year. Hereafter, partners and members will be collectively referred to as partners. All qualified partners who elect to participate in the group return must have the same accounting period.

A group return is considered a group of individual returns that meet the New York State and Yonkers tax return filing requirements. Accordingly, if a qualified partner elects to participate in the group return, the partner is not required to file an individual New York State or Yonkers personal income tax return or nonresident earnings tax return for the year.

Approval to file a group return

A partnership that wishes to file a group return on behalf of its qualified electing partners must request permission to do so by submitting an application on Form TR-99, *Application for Permission to File a Group Return*. Form TR-99 must be submitted to: **NYS Tax Department, Taxpayer Contact Center, W A Harriman Campus, Albany NY 12227.** You must file Form TR-99 no later than 30 days following the close of the initial tax year for which you are requesting to file a group return. See *Need help?* on page 4 for information on how to get forms.

After receipt of a properly completed Form TR-99, the Tax Department will determine whether permission will be granted and will notify the partnership accordingly. If approval is granted, the partnership will be issued a special New York State identification number to be used only for filing the group return. The Tax Department's approval to file on a group basis is contingent upon the receipt of the group return for the applicable tax year (for example, 2008), and is subject to revocation upon audit. An approval to file on a group basis will remain in effect unless it is revoked. Annual approval is not required. However, see *Reinstatement*, below. In addition, the partnership must maintain at least 11 electing partners in order to continue filing on a group basis.

Note: You must obtain prior approval to file a group return. If you file a group return without prior approval, the return will be rejected and the participating partners could be subject to late-filing or late-payment penalties, or both.

The approval to file a group return will not be retroactively revoked after the return has been filed simply because the partnership fails to maintain 11 qualified electing partners. For example, if a partnership filed a group return for 13 qualified electing nonresident partners for tax year 2008, and it is subsequently determined that three of the partners did not qualify to be included on the group return, the approval to file the group return for 2008 will not be revoked. However, approval to continue filing any further group returns for future years will be revoked unless the partnership has 11 or more qualified electing partners for those years.

Reinstatement: If a partnership that has received approval to file on a group basis decides not to file a group return for a particular tax year, it must notify the Tax Department of its decision in writing at the previously stated address. The notice must show the name and address of the partnership and the special New York identification number. In addition, if the partnership wishes to file a group return for a subsequent year, it must request reinstatement of its approval to file a group return. A request for reinstatement must be submitted on Form TR-99. Form TR-99 must be submitted no later than 30 days following the close of the first tax year for which reinstatement is requested.

Group agent and powers of attorney

A partnership that requests approval to file a group return must appoint one partner as the *group agent*. The group agent must have legal authority to act as an agent in matters relating to the group return, for all partners participating in the return. The group agent is required to sign the group return, and any communications from the Tax Department will be sent to the group agent. Any notices required by law, such as a notice of deficiency or a notice and demand, will be sent to the group agent as well as to the individual partner involved. The group agent will be personally liable for only those penalties relating to making or signing an erroneous, false, or fraudulent return, but only if the agent was actually responsible for the error.

Unless the partnership is exempt (see *Exemption*, below), Form TR-99 must be accompanied by an individual power of attorney (however, see *Note* below) for each qualified nonresident partner who the group agent knows, at the time of application, will be participating in the group return. The power of attorney must authorize the group agent to represent the participating partner in the filing of the group return. If, after the application date, an additional partner elects to participate in the group return (or subsequent year's group return), a power of attorney for that partner must be attached to the first group return on which the partner is included. If a partnership requests reinstatement of approval to file a group return (see *Reinstatement*, above), the partnership must also resubmit powers of attorney as previously described.

If the partnership changes its group agent, it must notify the Tax Department immediately at the previously stated address. In addition, if the partnership is required to submit powers of attorney as described above, the notice must be accompanied by new powers of attorney for all participating partners (however, see *Note*, below).

Note: Other evidence that establishes the group agent's authority to act as an agent in making, executing, and filing the group return for the qualified electing nonresident partners, if acceptable to the Tax Department, may be submitted instead of individual powers of attorney. If you wish to submit other evidence, attach a statement to Form TR-99 describing the evidence you wish to submit; the Tax Department will notify you whether or not it is acceptable. The filing of Form DTF-350, *Group Affidavit,* in accordance with the instructions of that form, is acceptable evidence that may be submitted instead of individual powers of attorney.

Exemption: If the partnership

— requested permission to file a group return before December 31,1996, **and**

— had 50 or more qualified electing partners at the time it requested permission to file,

then the partnership is exempt from the power of attorney submission requirements previously described. This exemption remains in effect as long as the partnership continues to file a group return each year. However, the group agent must still have legal authority to act as an agent for the participating partners in all matters related to the group return. If a partnership must request reinstatement of permission to file a group return because it failed to file a group return for the prior year(s), it will become subject to the power of attorney submission requirements at that time.

Qualified nonresident partner

A *qualified nonresident partner* is a partner who meets **all** of the following conditions:

— The partner must be a nonresident **individual** of New York State for the entire tax year (a partner that is a trust is not a qualified nonresident partner).

— The partner did not maintain a permanent place of abode in New York State at any time during the tax year.

— Neither the partner nor the partner's spouse has income derived from New York sources other than (1) the partner's distributive share of partnership income with New York additions and subtractions allocated to New York, or (2) other income derived from certain New York sources described on page 2.

— Neither the partner nor the partner's spouse is subject to the New York State minimum income tax or the New York State separate tax on the ordinary income portion of a lump-sum distribution.

— The partner must waive the right to claim the New York standard deduction or itemized deduction, the New York dependent exemption, any New York State personal income tax credits (see *Special rule for credits* below), and any carryback or carryover of a New York State net operating loss (NOL) or capital loss (see *Special rule for New York State NOL or capital loss* below).

Special rule for credits: The partner must waive the right to claim any New York State personal income tax credits that originate in a year for which the partner elects to file on a group return. The partner must also waive the right to claim any carryover to a subsequent tax year(s) of a credit(s) that originated in a year for which the partner elected to file on a group return, whether the partner files on a group return or files an individual personal income tax return for the subsequent tax year(s). Additionally, the partner must waive the right to claim any carryover of a credit(s) on the group return that originated in a year for which the partner filed an individual personal income tax return.

However, if a credit originated in a year for which the partner filed an individual personal income tax return, the partner may claim a carryover of the credit (if applicable), in any subsequent tax year for which the partner files an individual personal income tax return even if the partner filed on a group return for any year or years after the credit was initially claimed. In this instance, a partner must consider any year or years for which the partner filed on a group return for purposes of determining the allowable carryover period for those credits with limited carryover periods.

Special rule for New York State NOL or capital loss: Determine a New York State NOL or capital loss for each partner who has elected to file on a group return in the same manner as if the partner was filing an individual nonresident personal income tax return. Any New York State NOL or capital loss that originates in a year for which the partner elects to file on a group return, or originates in a year for which the partner files an individual personal income tax return, may not be carried back or carried over to a year for which the partner elects to file on a group return. However, the partner may claim any NOL or capital loss carryback or carryover amount in any previous or subsequent year in which the partner files an individual personal income tax return. In this instance, a partner must consider any year or years for which the partner filed on a group return, for purposes of determining the allowable carryback or carryover period applicable to an NOL.

Note: If a nonresident partner incurs an NOL for New York State income tax purposes but does not incur an NOL for federal income tax purposes, the partner may elect for New York State income tax purposes, to waive the two-year carryback period and to carry the NOL forward (on the partner's individual personal income tax return) to each of the 20 years following the tax year of the NOL, to the extent not absorbed. A statement must be attached to the nonresident group return indicating that the partner is electing to waive the two-year carryback period. The election must be made by the due date of the nonresident group return for the year of the NOL. The election may not be revoked once made. If more than one nonresident partner is making the election, the statement attached to the nonresident group return must include the name and social security number of each nonresident partner making the election.

Special rules for spouses: If both a husband and wife are partners in the same partnership, both spouses may be included in the group return if they both meet the qualifications described above and both spouses elect to participate. Unless **both** spouses elect to participate, **neither** may participate in the group return.

If a partner or partner's spouse has other New York source income only from another partnership, New York S corporation, professional athletic team, or other group or organization that files a group return and (1) the partner or partner's spouse participates in the other group return(s); and (2) the partner or partner's spouse does not participate in more than 10 group returns for the tax year, the partner must be included on the partnership's group return. The partner must also waive the right to claim the allowable exclusion for purposes of the Yonkers nonresident earnings tax if the partner has Yonkers income from more than one source. The partner must also notify each group agent that the partner is included on another group return.

Note: In the case of a partner and a partner's spouse who are both participating in group returns, the 10-group return limitation, and the waiving of the allowable exclusion for purposes of the Yonkers nonresident earnings tax, is determined individually (that is, the partner may participate in up to 10 group returns and the partner's spouse may participate in up to 10 group returns).

Example: *A husband participates in a group return for Partnerships A and B and has Yonkers income from both partnerships. The partner's wife participates in a group return for Partnership C and has Yonkers income from Partnership C. The husband is participating in two group returns for purposes of the 10-group return limitation, and must also waive the allowable exclusion for purposes of the Yonkers nonresident earnings tax on the group returns of both Partnerships A and B because he has Yonkers income from more than one source. The wife is participating in one group return for purposes of the 10-group return limitation and may claim the allowable exclusion for purposes of the Yonkers nonresident earnings tax since she has Yonkers income from only one source.*

Electing to participate in the group return

A qualified nonresident partner elects to participate in the group return by informing the group agent that he or she wishes to participate. The election must be made by the fifteenth day of the fourth month following the close of the tax year for which the election is being made. The partner's inclusion in the group return constitutes notice to the Tax Department that the partner is electing to participate in the group return.

A partner who elects to be included in the group return may not change that election after the fifteenth day of the fourth month after the close of the tax year. However, if it is later determined that a partner included in the group return did not meet the definition of a qualified nonresident partner for the tax year, the partner would be required to file an amended return on an individual basis.

A partnership filing a group return must attach to its Form IT-204, *Partnership Return*, a list showing the name (in either alphabetical or social security number order) and social security number of each partner who will be included on the group return.

Yonkers nonresident earnings tax

If a partnership files a group New York State return **and** the partnership has income derived from Yonkers sources, the partnership **must** also file a group Yonkers nonresident earnings tax return. The group Yonkers return must include all qualified nonresident partners who participate in the group state return. If a partner does not participate in the group state return, the partner may not participate in the group Yonkers return.

However, a partnership may file a group Yonkers return even if the partnership is not filing a group New York State return. To be eligible to file a separate group Yonkers return, the partnership must have 11 or more qualified nonresident partners for Yonkers purposes who elect to participate in the Yonkers group return.

A *qualified nonresident partner* for Yonkers purposes is a partner who meets **all** of the following conditions:

— The partner must be a nonresident **individual** of **New York State** for the entire tax year (a partner that is a trust is not a qualified nonresident partner).

— The partner did not maintain a permanent place of abode in New York State at any time during the tax year.

— The partner has no income derived from Yonkers sources other than the partner's share of the partnership's net earnings from self employment allocated to Yonkers. (A partner cannot be included on more than one group Yonkers return unless the partnership is also filing a group New York State return.)

A partnership that elects to file only a Yonkers group nonresident return must make application to the Tax Department, appoint a group agent, and submit any required powers of attorney in the same manner that applies for New York State purposes.

If the separate Yonkers election is made, each of the participating nonresident partners will file an individual New York State nonresident income tax return and omit the Yonkers entries on the return. The partner must attach a statement to the return that the Yonkers

nonresident earnings tax is being reported separately on a group return filed by the partnership. The statement must also contain the special New York identification number assigned to the partnership.

Sales and use tax

Individual taxpayers may report the amount of New York State and local sales and use taxes that they owe, if any, on their personal income tax return. Sales and use tax **cannot** be reported on the group return. However, if a qualified nonresident electing partner expects to owe sales and use tax (see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return),* the partner may still be included on the group return, but must also file Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax,* on or before April 15, 2009, to report and pay any sales and use tax the partner owes.

Estimated income tax payments

A partnership that has received approval to file a group nonresident return may also elect to file group estimated income tax installments on behalf of its qualified electing partners.

The **group installments** are filed on **Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals***. The form must show the name and address of the partnership and the special New York identification number assigned to the partnership. Enter on Form IT-2105 the total state and Yonkers estimated income tax paid on behalf of the group. However, the group agent must maintain records to show that portion of the total that is paid on behalf of each participating partner.

If the 2008 estimated income tax payments do not equal at least 90% of the 2008 income tax, or 100% of the 2007 income tax (110% of that amount if the nonresident partner is not a farmer or fisherman and the New York adjusted gross income on that return is more than $150,000 or, if married filing separately, more than $75,000), based on a return covering 12 months, a penalty for underpayment of estimated income tax may be imposed. However, a penalty will only be charged if at least $300 of New York State or Yonkers income tax is owed. For more information, see Form IT-2105.9, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries,* and the instructions for that form (Form IT-2105.9-I).

If a qualified nonresident partner who was included in the group estimated income tax decides not to participate in the group return, or if the partnership subsequently decides not to file a group return for the tax year, the group agent should notify the Tax Department no later than February 15 of the year in which the return is due. This notification must contain the following information:

— the name and address of the partnership

— the special New York identification number assigned to the partnership

— the partner's name, address, and social security number

— the amount of state and, if applicable, Yonkers estimated income tax paid on the partner's behalf

— a request that the payment or payments be transferred to an individual estimated income tax account in the partner's name

If more than one partner included in the group estimated income tax will not be participating, the above partner information should be provided for each partner. The **notification** must be mailed to: **NYS Tax Department, Estimated Tax Unit, W A Harriman Campus, Albany NY 12227-0125.**

This transfer of estimated income tax payments could take two to three weeks to become effective. If the partner files an individual personal income tax return before the transfer becomes effective, the partner will not get credit for these payments when the return is processed, and a tax due notice will be issued to the partner. Therefore, this time period should be taken into account when filing the partner's individual tax return.

If a partner who was included in the group estimated income tax notifies the group agent after February 15, 2009, but before April 15, 2009, the group agent should notify the Tax Department immediately, using the procedure described above. In this situation, the individual partner may wish to request an extension of time to file to ensure that the estimated income tax payment will be properly credited to the individual's account prior to the individual's return being filed.

Amended return or federal change

An amended group return must be filed if an amended federal return is filed by the partnership, or if a federal audit of the partnership changes any of the partnership items of income, gain, loss, or deduction reported on the original group return. An amended group return must be filed within 90 days of the date the federal amended partnership return is filed, or, in the case of a federal audit, within 90 days after the final determination of the change. Attach a copy of the federal report of examination changes and a signed statement by the group agent indicating that the partnership concedes the federal audit changes. If the partnership does **not** concede the federal audit changes, attach a signed statement explaining why.

Specific instructions

Form IT-203-GR

Name and address box

Enter in the spaces at the top of the return the legal name, trade name (if any), address, and employer identification number of the partnership exactly as these items will appear on its New York State partnership return, Form IT-204. In addition, enter the special New York identification number in the box indicated.

Note: You must complete **Form IT-203-GR-ATT-A**, and if applicable, **Form IT-203-GR-ATT-B, before** you can complete lines 1 through 10 of Form IT-203-GR.

Line 9 — If you owe more than one dollar, attach your payment to the front of this return. Make your check or money order payable to ***New York State Income Tax,*** and write your special New York identification number and ***2008 Form IT-203-GR*** on it. Do not send cash. See *Where to file* below.

Line 10 — The amount overpaid will automatically be applied to your 2009 estimated income tax. This amount **cannot** be refunded to you.

Signature

This form must be signed by the group agent on behalf of the participating partners. If you use a paid preparer, he or she must also sign the return and fill in the other information required.

Note to paid preparers — When preparing the group return, you must enter your federal preparer tax identification number (PTIN), if you have one. If you do not have a PTIN, use your social security number.

When to file

You may file Form IT-203-GR at any time after January 1, 2009, but not later than the filing deadline of April 15, 2009. If you file late, you may have to pay penalties and interest.

Extension of time to file — If you cannot meet the filing deadline, the partnership may request an extension of time to file the group return using Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals.* Form IT-370 must show the special identification number assigned to the partnership. The partnership must also attach to Form IT-370 a list showing each participating partner's name (in either alphabetical or social security number order), address, and social security number.

Where to file

Mail the completed group return to:

NEW YORK STATE INCOME TAX
W A HARRIMAN CAMPUS
ALBANY NY 12227

Private delivery services — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* on page 4 of these instructions for information on obtaining forms and publications.) If you

have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery.

Forms IT-203-GR-ATT-A and IT-203-GR-ATT-B

Schedules A and B

If you are filing a group New York State return you must complete Schedule A. You must also complete Schedule B if the partnership has income derived from Yonkers. Attach the applicable schedules to Form IT-203-GR.

If you are filing a group Yonkers return only, do not complete Form IT-203-GR-ATT-A. However, you must complete Form IT-203-GR-ATT-B.

Use as many schedules as you need to list all qualified nonresident partners participating in the group return. Enter the grand totals from all attachment sheets on the last attachment sheet of each set of schedules.

Note: You may computer generate Schedules A and B, provided they conform substantially to the official schedules. Any computer-generated schedules must be in the same format as Schedules A and B and must use a font face and size (#12 or larger) that is easy to read.

Schedule A

Column C — Enter the total of the amounts shown on Form IT-204-IP, *New York Partner's Schedule K-1*, column B, lines 1 through 11.

Column D — Enter the total of the amounts shown on Form IT-204-IP, column C, lines 1 through 11. However, if a net short-term or long-term capital loss is reported on line 8 or line 9, the amount of the loss included in the total amount to be reported on Form IT-203-GR-ATT-A, column D, must be determined in the same manner as if the partner was filing an individual nonresident personal income tax return *(see the instructions for Form IT-203, line 7).*

Column E — Enter the total of the amounts shown on Form IT-204-IP, column B, lines 12 and 13. These include amounts paid on the partner's behalf for medical insurance, and contributions to IRA, Keogh, and SEP plans. Do not include in this column any deductions that are required to be treated as itemized deductions on the partner's federal income tax return. Also, do not include the partner's federal deduction for one-half of self-employment tax, since this deduction is not treated as a partnership deduction for federal purposes.

Column F — Enter the total of the amounts shown on Form IT-204-IP, column C, lines 12 and 13.

Column G — From Form IT-204-IP, enter as a net addition or net subtraction the total amount of additions allocated to New York State from column B, line 20, and the total amount of subtractions allocated to New York State from column B, line 22.

Column J — Enter each partner's New York State estimated income tax paid and/or amount paid with Form IT-370. Be sure to include any overpayment from the 2007 group return that was applied to the partner's estimated income tax.

Column M — Mark an ***X*** in this column if the partner is participating in another group return.

Schedule B

Column D — Use the instructions on the back of Form Y-204, *Yonkers Nonresident Partner Allocation,* to determine the amount of column C to be entered in column D.

Column E — If the partner has Yonkers income from only one source, use the *Yonkers exclusion table* below to determine the amount to be entered in column E.

Column K — Mark an ***X*** in this column if the partner is participating in another Yonkers group return, and enter ***0*** in column E.

Yonkers exclusion table

If the amount in column D is: Over	But not over	Exclusion
$ 0	$10,000	$3,000
10,000	20,000	2,000
20,000	30,000	1,000
30,000		None

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: *www.nystax.gov*
Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Refund status: 1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)

To order forms and publications: 1 800 462-8100

Personal Income Tax Information Center: 1 800 225-5829

From areas outside the U.S. and outside Canada: (518) 485-6800

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110

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, please call 1 800 225-5829.