



Instructions for Form IT-204

Partnership Return

IT-204-I

General Information

Effective for tax years of a partnership beginning on or after July 1, 1996, the income allocation method for purposes of the New York City Unincorporated Business Tax has been changed. The new method no longer corresponds to the allocation method required to be used by nonresident partners under the New York City nonresident earnings tax. Accordingly, a partnership whose tax year began on or after July 1, 1996, **must use Form IT-204-NYC** to allocate its nonresident partners' net earnings from self-employment to New York City. This applies to every partnership doing business in New York City and having a partner who is a nonresident of New York City. The allocation computed on Form NYC-204, *City of New York Unincorporated Business Tax Partnership Return*, may **not** be used.

If the tax year of the partnership began before July 1, 1996, it may still use the allocation computed on Form NYC-204 to allocate its nonresident partners' net earnings from self-employment to New York City. In this case, the partnership does not have to complete Form IT-204-NYC or attach it to its IT-204.

Chapter 576 of the Laws of 1994 allows for the formation of limited liability companies and limited liability partnerships in New York State (domestic LLCs and LLPs). In addition, New York recognizes LLCs and LLPs formed under the laws of other states and foreign countries (foreign LLCs and LLPs). Any domestic or foreign LLC or LLP that is required to file a New York State partnership return must also complete and file Form IT-204-LL, *Limited Liability Company/Partnership Filing Fee Payment Form*. For more information regarding LLCs and LLPs, see Form IT-204-LL.

Effective August 8, 1995, certain investment companies, that are established and regulated under Article 12 of the New York State Banking Law, will now be able to organize themselves as limited liability investment companies (LLICs). The LLIC option is available only to Article 12 investment companies that serve as holding companies for foreign banking operations. Any LLIC that is required to file a New York State partnership return must also complete and file Form IT-204-LL, *Limited Liability Company/Partnership Filing Fee Payment Form*. For more information regarding LLICs, see Form IT-204-LL.

Purpose of Form

Form IT-204 is used to report income, deductions, gains, losses and credits from the operation of a partnership for the calendar year 1996 or other fiscal year beginning in 1996. All items reported on Form IT-204 or on attachments to it are subject to verification, audit and revision by the New York State Tax Department.

Penalties

Partnership — A penalty is imposed against the partnership if the partnership is required to file a partnership return and (1) fails to file the return on time, including extensions, (2) files a return that fails to show all the information required, or (3) fails to file an amended partnership return within 90 days of the date the final federal determination or disallowance is issued or when

the federal amended partnership return is filed, unless the failure is due to reasonable cause and not due to willful neglect.

The amount of the penalty for each month or fraction of a month (for a maximum of five months) that the failure continues is \$50 multiplied by the total number of persons who were partners in the partnership during any part of the partnership's tax year for which the return is due. In counting the number of partners for purposes of this penalty, include only individuals, estates and trusts subject to tax under Article 22. Do not include corporations or partnerships.

Failure of paid preparers to comply with requirements - A penalty of \$50 per return or claim for refund will be assessed a paid preparer for failure to comply with any of the following requirements:

- failure to sign the tax return or claim for refund;
- failure to include the identifying number of the paid preparer (if an individual paid preparer is an employee of an employer or a partner in a partnership that is a paid preparer, the return or claim for refund must also include the identifying number of the employer or partnership);
- failure to furnish a completed copy of the tax return to the taxpayer not later than the time the return is presented for the taxpayer's signature;
- failure to keep a completed copy of the return prepared for each taxpayer or to keep the name and identification number of each taxpayer for whom a return was prepared on a list and to make the copy or list available for inspection upon request. The period for retaining a completed copy of the return or information on the list is three years after the due date of the return (without regard to extensions) or three years after the date the return was presented to the taxpayer for signature, whichever is later.

For each of the requirements listed above, a paid preparer may be subject to a maximum penalty of \$25,000.

City of New York Unincorporated Business Tax

These instructions apply to the New York State partnership return only. They do not apply to the New York City unincorporated business tax, which is administered by the New York City Department of Finance, 25 Elm Place, 4th Floor, Brooklyn, NY 11201.

City of Yonkers Nonresident Partner Allocation

Every partnership doing business in Yonkers and having a partner who is a nonresident of Yonkers must complete Form Y-204, *City of Yonkers Nonresident Partner Allocation*, and show the nonresident partner's distributive share of net earnings from self-employment.

Who Must File

Partnerships are not subject to personal income tax. But every partnership (1) having a partner who is a resident of New York State or (2) having any income from New York State sources

must file a return on Form IT-204 regardless of the amount of its income. For filing purposes, a partner that is a corporation or a partnership is not deemed to be a resident of New York State even though the entity may have been formed under the Laws of New York State.

If you are filing a return specifically because you have a New York resident partner, but do not conduct business in New York, you do not have to submit Schedules K-1 for nonresident partners. In addition, you do not have to complete Schedule A. Complete Schedule B only for resident partners.

Income from New York State sources includes:

1. income attributable to the ownership of any interest in real property or tangible personal property located in New York State and intangible personal property to the extent it is used in a business, trade, profession or occupation carried on in New York State, and
2. income attributable to a business, trade, profession or occupation carried on in New York State.

A partnership carries on a business, trade, profession or occupation within New York State if (1) it maintains or operates an office, a shop, a store, a warehouse, a factory, an agency or other place where its affairs are systematically and regularly carried on, or (2) it performs a series of acts or transactions with regularity and continuity for livelihood or profit, as distinguished from isolated or incidental transactions.

If a nonresident is a member of a partnership that carries on business (as defined above) both in and out of New York State, complete Schedule B, Part IV, to show the allocation to New York State of the nonresident partner's share of income and deductions.

Certain publicly traded partnerships and associations, which previously filed Form IT-204, are treated as a corporation pursuant to Internal Revenue Code (IRC) section 7704.

If you have purchased or renewed a taxable insurance contract from an insurer not authorized to transact business in New York State, you must complete Form CT-33-D, *Tax on Premiums Paid or Payable to an Unauthorized Insurer on Risks Located Within New York State*. This return must be filed within 60 days after the end of the calendar quarter in which the contract was purchased or renewed.

If you purchase or renew a taxable insurance contract from an insurer not authorized to transact business in New York State under a Certificate of Authority from the Superintendent of Insurance, you will be liable for a tax of 3.6% of the premium. (See Form CT-33-D and TSB-M-90(9)C for more information.)

When to File

Returns for calendar year 1996 are due April 15, 1997. Fiscal-year returns are due the 15th day of the fourth month after the end of the tax year.

If a partnership is terminated and completely liquidated during its normal taxable year, resulting in an accounting period of less than 12 months for federal income tax purposes, the

return is due the 15th day of the fourth month after the end of the accounting period.

Use the same accounting period and method for Form IT-204 as you use for federal Form 1065. If you change your partnership's tax year or accounting method for your federal return, do the same on your *New York State Partnership Return*.

Extension of Time to File

If you need more time to file a partnership return, file Form IT-370-PF, *Application for Automatic Extension of Time to File for Partnerships and Fiduciaries*, by the due date of the partnership return. Federal Form 8736 is acceptable in lieu of Form IT-370-PF. Federal Forms 2758 and 4868 are not acceptable substitutes.

If you have filed Form IT-370-PF and still need more time, use Form IT-372-PF, *Application for Additional Extension of Time to File for Partnerships and Fiduciaries* to request up to an additional three months to file. Except in cases of undue hardship, we will not accept Form IT-372-PF if you do not first file Form IT-370-PF.

Where to File

Mail your return to:

STATE PROCESSING CENTER
PO BOX 61000
ALBANY NY 12261-0001

Need Help?

For information, call toll free 1 800 225-5829.
For forms or publications, call toll free 1 800 462-8100. Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.

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

Hotline for the Hearing and Speech Impaired -

If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, 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, please call the information numbers listed above.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

Amended Return or Federal Change

An amended New York State partnership return must be filed if an amended federal partnership return is filed, or if a federal audit of the

partnership return changes any item of income, deduction or tax preference item previously reported to the Internal Revenue Service. The amended New York State 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 indicating you concede the federal audit changes. If you do not concede the federal audit changes, attach a signed statement explaining why.

If the partnership fails to file the required amended return or fails to submit the required partner information (showing the identification number of each partner and the portion of the federal change allocable to each) the partnership will be subject to a penalty of \$50 per partner per month or fraction of a month, up to a maximum of five months.

An amended New York State partnership return must also be filed to correct any error on the original New York State partnership return, whether or not an amended federal partnership return was filed for that year.

To amend your original Form IT-204, get a blank Form IT-204 for the tax year that is to be amended and write **Amended** at the top. Complete the form, entering the corrected information, and attach an explanation of the changes.

Specific Instructions

Attach federal Form 1065, Schedules K-1 and all supporting attachments to Form IT-204.

However, if the partnership conducts business entirely outside of New York State, and you are filing a return specifically because you have a New York resident partner, you do not have to submit Schedules K-1 for nonresident partners. In addition, you do not have to complete Schedule A. Complete Schedule B only for resident partners. Attach a statement to your return indicating that:

- There is no income derived from New York sources by the partnership;
- All other partners of the partnership are nonresidents of New York State;
- There are a total of _____ nonresident partners;
- If at any time in the course of an audit it is deemed necessary to have copies of Schedules K-1 for nonresident partners, such information will be available for submission.

All information on Form IT-204 should be for the calendar year January 1 through December 31, 1996, or for the fiscal year of the partnership which began in 1996. If filing for a fiscal year, enter the month and day the tax year began, and the month, day and year that it ended at the top of the front page.

Name and Address Box

Enter in the spaces at the top of the return the exact legal name, trade name, if any, and address of the partnership. The legal name is the name in which the business owns property or acquires debt. Enter the trade name or d/b/a (doing-business-as) name if different from the legal name. Also enter the business's employer identification number, principal business activity, principal product or service, federal business code number and date the business was started. Answer questions A through H.

For question G, enter the number of partners in the partnership during any part of the partnership's taxable year who were also subject to the New York State personal income tax under Article 22 of the Tax Law during any part of that tax year.

If you have any other New York tax accounts, check the appropriate boxes on lines 1 and 2 of question H and enter the identification number(s).

Schedule A

Complete Part I if the partnership carries on business both in and out of New York State. Enter the exact location of each place where the partnership carries on business; describe each place (e.g., branch office, agency, factory, etc.), and state whether it is rented or owned by the partnership.

Complete Part II if the partnership carries on business both in and out of New York State but does not maintain books and records from which the New York business income can be determined.

Part II must still be completed even though it may not fairly and equitably reflect the income from New York, and an authorized alternate allocation method is used. A detailed explanation of the authorized alternate method used to determine the New York income must be attached, together with full details of any *changes* increasing or decreasing the amount of New York income computed by the authorized alternate method.

Property percentage

Figure the average value of real and tangible personal property connected with the partnership by completing lines 1, 2 and 3.

Line 1 Real Property owned

Enter in column A the average value of all real and tangible personal property connected with the partnership by completing lines 1, 2 and 3.

The average value of the property is determined by (1) adding its adjusted basis at the beginning of the taxable year to its adjusted basis at the end of the taxable year and (2) dividing by two.

Line 2 Real property rented from others

The value of real property rented to the business and to be included in line 2 is eight times the gross rent payable during the taxable year for which the return is filed. Gross rent includes: any amount payable for the use or possession of real property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise, any amount payable as additional rent, or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other agreement; and the cost of any improvement to real property made by or on behalf of the business that reverts to the owner or lessor upon termination of a lease or other arrangement. However, if a building is erected on leased land by or on behalf of the business, the value of the building is determined in the same manner as if it were owned by the business.

Line 3 Tangible personal property owned

Enter in column A the average value (determined in accordance with the instruction for line 1) of all tangible personal property owned by the business. Enter in column B the average value of tangible personal property located in New York State.

Line 4 Property percentage — Add lines 1, 2 and 3 in columns A and B and enter each total on line 4. Divide the column B total by the column A total and carry the result to four decimal places. For example, if the total in column A is \$15,000 and the total in column B is \$10,000, divide \$10,000 by the \$15,000 and enter the result (.6667) as a percentage (66.67%) in column C.

Line 5 Payroll percentage — The amounts to be entered on line 5 include wages, etc., paid only to **employees** of the partnership. Do not include payments to independent contractors, independent sales agents, etc. Enter on line 5 in column A the total of such pay to employees during the taxable year for partnership operations carried on both in and out of New York State. Enter on line 5 in column B the amount of that pay for operations carried on in New York State. Operations are considered to be carried on in New York State if the employee works in or travels out of an office or other place of business located in New York State. If in Schedule B, line 13, you subtracted an amount based on wages not allowed because of the federal targeted jobs credit, this change should be reflected here in wages and salaries paid during the year. Divide the column B total by the column A total. Carry the result to four decimal places and enter it as a percentage in column C.

Line 6 Gross income percentage — The amount to be entered on line 6 in column A is total gross sales made, or charges for services performed, by the partners or by employees, agents, agencies or independent contractors of the partnership in and out of New York State. The amount to be entered on line 6 in column B is the part of total gross sales or charges that represents sales made or services performed by or through an agency in New York State. This includes sales made or services performed by employees, agents, agencies or independent contractors situated at, connected with or sent out from offices of the partnership (or its agencies) located in New York State. For example, if a salesman working out of the New York office of the business covers the states of New York, New Jersey and Pennsylvania, **all** sales made by him are to be allocated to New York State and included on line 6 in column B. Divide the column B total by the column A total. Carry the result to four decimal places and enter it as a percentage in column C.

Signatures

A general partner must sign Form IT-204.

Anyone you pay to prepare the partnership return must also sign it and fill in the other blanks in the paid preparer's area of the return. The preparer required to sign the partnership return must sign it by hand; signature stamps or labels are not acceptable. If someone prepares the return and does not charge you, the paid preparer's area should not be filed in.

Enter your daytime telephone number including the area code. This voluntary entry will enable the Tax Department to correct minor errors or omissions by calling you rather than writing or sending back your claim. **You are not required to give your telephone number.**

Schedule B

Complete Part I, Part II, and Part III for all partners who were members of the partnership during any part of the taxable year.

You must complete Part IV for each nonresident partner if the partnership conducts business in and out of New York State and the partnership's allocation percentage to New York State is less than 100%. The nonresident partners' New York amounts are computed using the appropriate allocation method as explained in the following section.

Part-year resident partners - If you were a partner and changed your New York resident status during the taxable year, you must determine your distributive share of partnership items of income, gain, loss or deduction according to your resident status when the taxable year of the partnership ends.

Nonresident partners' allocation

A nonresident member of a partnership must include in the partner's individual New York State income tax return the partner's distributive share, for federal tax purposes, of items of partnership income, gain, loss, deduction and tax preference items derived from or connected with New York State sources that is (a) from real or tangible personal property having an actual situs in New York State, or (b) from a business, trade, profession or occupation carried on in New York State.

Enter in Part IV the items of partnership income, gain, loss and deduction to be reflected in the partner's individual New York return. A partnership carrying on business in and out of New York State that maintains books and records from which the New York income of the business can be determined will enter in Part IV the nonresident partner's distributive share of partnership items derived from New York State sources as determined from the books of account. However, amounts attributable to real property located in New York are 100% reportable by a nonresident partner and amounts attributable to real property located outside New York are not reportable by a nonresident partner (attach computation). (See *Special statutory limitations* below.)

A partnership carrying on business in and out of New York State that does not maintain books and records from which the New York income can be determined will use the *business allocation percentage* computed at line 8, Part II of Schedule A, or an authorized alternate method, to determine the portion of the nonresident partner's share of any item that is derived from or connected with New York sources (with the exception of the real property items).

The amount shown under the nonresident partner's name (Part IV) for any item of income or deduction entering into the computation of total federal income must be included in the amount shown in the New York State amount column of Form IT-203 and is part of the partner's total income from New York sources.

Partnership deduction items not entering into the computation of federal adjusted income are to be reflected on Form IT-203-ATT, *Itemized Deductions and Other Credits and Taxes*, Part I, lines 1 through 14 as if the partner were a resident and would be 100% reportable (providing the New York standard deduction is not claimed).

Special statutory limitations on partnership agreements:

Regardless of any provision in the partnership agreement, a nonresident partner is not permitted to treat as non-New York income a greater proportion of the partnership income than the percentage of income of the partnership from non-New York sources. In addition, the partner is not permitted to claim a greater proportion of losses or deductions connected with New York sources than the partner's share of losses or deductions generally.

The characterization in a partnership agreement of payments to nonresident partners as salary, or as interest for the use of capital, does not affect the determination of whether such payments are derived from New York sources.

Nonresident partners must enter on their individual return the amount for adjusted gross income items only determined from the partnership's books and records or enter the amount multiplied by the *business allocation percentage* from Schedule B or the amount computed using an authorized alternate method.

Show the nonresident partners' share of specifically allocated items on a separate schedule. Follow the same format used for Part IV.

Part II - Partners' shares of New York modifications to federal items

Any of the listed modifications are to be added to or subtracted from each partner's federal adjusted gross income or federal itemized deductions on the partner's New York State income tax return in arriving at the partner's total New York income and New York itemized deduction, respectively.

Use lines 9 through 13 to list **only** those changes that apply to federal adjusted gross income on the individual returns of the partners. Use lines 14 and 15 for those changes that apply to the partners' federal itemized deductions.

You must enter the total of the partners' shares of New York modifications to federal items in the *Total All Partners* column.

Additions

Line 9 Personal income taxes and unincorporated business taxes deducted in determining partnership ordinary income — No personal income taxes can be deducted by the partners in determining their New York taxable incomes.

If the partnership included a deduction for state, local or foreign income taxes, or unincorporated business taxes (including New York City unincorporated business taxes) in figuring its federal ordinary income, **then** include each partner's share of that deduction on line 9. For example, if the partnership deducted New York City unincorporated business tax on federal Form 1065, include each partner's share of this tax on line 9.

Note: The limited liability company/limited liability partnership filing fee is not an income tax and is not added back on line 9.

Line 10 Accelerated cost recovery system (ACRS) deduction — New York State does not allow ACRS depreciation for property placed in service in certain tax years. The partnership must figure New York depreciation for this

property by using one of the methods provided for in section 167 of the Internal Revenue Code as it was in effect on December 31, 1980 (e.g., straight line, declining balance, etc.). Also see the instructions for line 12.

If the partnership claimed ACRS depreciation on its federal return for property not classified as IRC section 280F property (such as luxury automobiles), and:

- that property was placed in service inside or outside New York State in tax years beginning in 1981, 1982, 1983 and 1984; or
- that property was placed in service outside New York State in tax years beginning after December 31, 1984, but before January 1, 1994 (including property on which ACRS depreciation was figured in accordance with the Federal Tax Reform Act of 1986);

then include on line 10 each partner's share of the deduction. The partnership must complete Form IT-399 and attach it to Form IT-204.

Line 11 Other additions

A-1 Interest income on state and local bonds and obligations (but not those of New York State or its local governments) — Interest income on obligations of other states or political subdivisions of those states that is exempt from federal income tax is subject to New York State tax. This includes interest income on state and local bonds (but not those of New York State and local governments within the state), interest and dividend income from tax-exempt bond mutual funds and tax-exempt money market funds that invest in obligations of states other than New York.

If the partnership received or was credited with this type of income during the tax year, and the income was not includable in the partner's federal adjusted gross income, then include each partner's share of that income on line 11.

A-2 Investment income from certain obligations of U.S. government agencies or affiliations — Federal laws specifically exempt investment income from certain obligations of U.S. government agencies or affiliations from federal taxation but not from state taxation.

If the partnership received or was credited with any interest or dividend income from any United States authority, commission or instrumentality that federal laws exempt from federal income tax but do not exempt from state income tax, then include each partner's share of that income on line 11.

A-3 Interest expense on loans used to buy obligations exempt from New York State tax, amortized bond premium on bonds that are exempt from New York tax, and other expenses relating to the production of income exempt from New York State tax

- (a) If the partnership's federal ordinary income includes a deduction for interest expense used to buy bonds, obligations or securities whose interest income is taxable for federal purposes but exempt from New York State tax, then include each partner's share of that expense on line 11.
- (b) If the partnership's ordinary income includes a deduction for the amortization of bond premiums on bonds whose interest income is taxable for federal purposes but exempt from New York State tax, then include each partner's share of that interest expense on line 11.

- (c) If the partnership's ordinary income includes a deduction for expenses related to the production for income that is taxable for federal purposes but exempt from New York State tax, then include each partner's share of that interest expense on line 11.

A-4 Special additional mortgage recording tax deduction — If the partnership excluded or deducted special additional mortgage recording tax in figuring its federal ordinary income, and the partners were previously allowed a New York State credit for that tax on their personal income tax returns, then include on line 11 each partner's share of the amount that was excluded or deducted.

A-5 Special additional mortgage recording tax basis adjustment — If property on which you paid the special additional mortgage recording tax is sold or disposed of, and the partners claimed the New York State credit in a prior year for the special additional mortgage recording tax paid on that property, and the federal basis of the property was not adjusted to reflect the amount of credit allowed, then include on line 11 each partner's share of the amount of the basis that was not adjusted for the amount of the credit claimed.

A-6 Special depreciation — If the partnership made an election for tax years beginning before 1987 for:

- special depreciation (see Form IT-211),
- research and development expenditures,
- waste treatment facility expenditures,
- air pollution control equipment expenditures, or
- acid deposition control equipment,

then include on line 11 each partner's share of depreciation or expenditure related to these items that was deducted for federal tax purposes. See subtraction S-12.

A-7 Percentage depletion — If the partnership claimed a deduction on its federal return for percentage depletion on mines, oil and gas wells, and other natural deposits, then include on line 11 each partner's share of the deduction. See subtraction S-11.

A-8 Operating an insurance business on the New York Insurance Exchange — If the partnership is doing business as a member of the New York Insurance Exchange, then include on line 11 each partner's share of:

- any item of loss or deduction claimed by the partnership for federal tax purposes; and
- each partner's pro rata share of the allocated entire net income from the business' New York State Corporation Tax Form CT-33-X.

Also see subtraction S-13.

A-9 New business investment; deferral recognition — If in any tax year beginning on or after January 1, 1982, and before 1988, the partners chose to subtract all or a portion of a partnership long-term capital gain from their federal adjusted gross incomes because that amount had been reinvested by the partnership in a new New York business, and if that

reinvestment was sold in the current tax year, then include on line 11 each partner's share of the amount that had previously been subtracted.

A-10 Deductions attributable to safe harbor leases (such a lease is a financial arrangement between either a corporation, partnership, or certain grantor trusts and a person, firm, estate, or trust to acquire and use an asset; the arrangement is allowed for federal tax purposes, but is not allowed for state purposes unless it involves mass transit vehicles) —

If in figuring its federal ordinary income, the partnership took deductions attributable to a safe harbor lease (except for mass transit vehicles) made under an election provided for by section 168(f)(8) of the Internal Revenue Code as it was in effect for agreements entered into prior to January 1, 1984, then include each partner's share of those deductions on line 11. Also see A-11, S-15 and S-16.

A-11 Safe harbor leases; election for qualified leased property (see A-10 above for definition of safe harbor leases) — If the partnership's financial matters for the current tax year involved a safe harbor lease (except for mass transit vehicles) made under an election provided for by section 168(f)(8) of the Internal Revenue Code as it was in effect for agreements entered into prior to January 1, 1984, then include on line 11 each partner's share of the income that the partnership would have included in its federal ordinary income if such election had not been made. Also, see A-10, S-15 and S-16.

A-12 Accelerated cost recovery property; year of disposition adjustment — If the partnership disposed of property which was depreciated for federal purposes using ACRS, and if ACRS depreciation was not allowed for state purposes (see line 10 above), then the partnership must complete Part II of Form IT-399, *New York State Depreciation Schedule*, to figure each partner's share of the amount, if any, to include on line 11.

A-13 Interest related to corporate acquisition — New York State Law specifically requires, in some cases, that up to 5% of interest that is related to a corporate acquisition and that is deducted in figuring a partner's New York adjusted gross income (without regard to this modification) be added to federal adjusted gross income.

If the partnership figured in a deduction for interest expense relating to a corporate acquisition when figuring either its federal ordinary income or in figuring one of the following subtractions, then include each partner's share of this interest expense on line 11. Attach a separate schedule to your return showing your computation. For more information, see TSB-M-89(10)I, *Mergers and Acquisitions*, dated February 20, 1990.

Subtractions

Line 12 New York depreciation allowed — New York does not allow ACRS depreciation for property placed in service inside or outside New York State during tax years 1981, 1982, 1983, or 1984, or for property placed in service outside New York State in tax years beginning after December 31, 1984, but before January 1, 1994. Instead, you must compute New York

depreciation by using one of the methods provided for in section 167 of the Internal Revenue Code as it was in effect on December 31, 1980 (e.g., straight line, declining balance, etc.). See line 10 above.

If you had this type of property, **then complete Part I of Form IT-399, New York State Depreciation Schedule**, to figure each partner's share of New York depreciation to include on line 12.

Line 13 Other subtractions

S-1 Income tax refunds — If the partnership included in its federal ordinary income any refund or credit for overpayment of any income tax (including the New York City unincorporated business tax), **then** include each partner's share of that refund on line 13.

S-2 Interest income on U.S. government bonds — Interest income on bonds or other obligations of the U.S. government is **not** taxed by New York. **If** the partnership included income from these obligations in its federal ordinary income, **then** include each partner's share of that income on line 13.

S-3 Certain investment income from U.S. government agencies — **If** the partnership included in its federal ordinary income any interest or dividend income on bonds or securities of any United States authority or commission or instrumentality that is exempt from state income taxes under federal laws, **then** include each partner's share of that income on line 13. **If** you are uncertain whether a particular federal bond or security is exempt from state income tax, contact the New York State Tax Department at the number on the second page of these instructions.

S-4 Certain investment income exempted by other New York State laws — **If** the partnership included in its federal ordinary income any interest or dividend income from any obligations or securities authorized to be issued by the laws of New York State, **and if** that income is exempt from state taxation by those laws (such as income received from bonds, mortgages, and income debenture certificates of limited dividend housing corporations organized under the Private Housing Finance Law), **then** include each partner's share of that income on line 13. **If** you are uncertain whether a particular obligation or security is exempt from state income tax, contact the New York State Tax Department at the number on the second page of these instructions.

S-5 Interest expense on loans used to buy federally tax exempt obligations that are taxable to New York State — **If** income from these obligations would have been includable in the partnership's federal ordinary income (not portfolio income) if it was subject to federal tax, **then** interest expense incurred to buy those obligations is deductible by the partners in determining their New York adjusted gross incomes.

If you are including on line 11 interest income from bonds or other obligations that are federally tax exempt but taxable to New York State (see A-1 and A-2 on page 4), **and if** the partnership incurred interest expense on loans used to purchase those obligations that was not deductible for federal purposes, **then** include each partner's share of that expense on line 13.

S-6 Expenses (other than interest expense) connected with federally tax exempt income that is taxable to New York State — **If** this type of income would have been includable in

federal ordinary income if it were subject to federal tax, expenses incurred to acquire or maintain that income are deductible in determining each partner's New York adjusted gross income.

If you are including on line 11 income that is federally tax exempt but taxable to New York State, **and if** you incurred expenses during the tax year to either produce or collect that income or manage, conserve or protect the assets that produce that income, **and if** those expenses were not deductible for federal purposes, **then** include each partner's share of those expenses on line 13.

S-7 Amortizable bond premiums on bonds the interest on which is federally tax exempt but taxable to New York State — **If** the income on these bonds would have been includable in federal ordinary income (not portfolio income) if it were subject to federal tax, **then** the amortizable bond premium on these bonds is deductible in determining each partner's New York adjusted gross income.

If you included on line 11 interest income on bonds that is federally tax exempt but taxable to New York State, **and if** those bonds were bought for more than their face value (i.e., at a premium), **and if** the amortizable bond premium on those bonds for the tax year was not deducted by the partnership for federal tax purposes, **then** include each partner's share of that amortization on line 13.

S-8 Wage and salary expenses allowed as federal credits but not as federal expenses — The federal government allows certain wage and salary payments to others to be taken as credits against taxes instead of as expenses against income. New York State does not have comparable credits, but does allow the expenses.

If you are entitled to take either a federal Indian employment credit, a targeted jobs credit, or an empowerment zone employment credit for wages and salaries paid during the tax year, **then** include each partner's share of the wage payments not deductible for federal purposes on line 13.

S-9 Sales or dispositions of assets acquired before 1960 with greater state than federal basis — When federally taxable gains are realized from the sale of certain assets that have higher adjusted basis for state tax purposes, subtraction adjustments must be made to reduce the gain for state tax purposes. State income tax laws prior to 1960 and currently existing state income tax laws about depletion can cause these differences in adjusted basis.

If the partnership is reporting a gain for federal tax purposes that was from **either**:

- property that had a higher adjusted basis for New York State income tax purposes than for federal income tax purposes on December 31, 1959 (or on the last day of a fiscal year ending during 1960); **or**
- property that was held in connection with mines, oil or gas wells, and other natural deposits and that had a higher adjusted basis for New York State income tax purposes than for federal tax purposes when sold;

then include on line 13 each partner's share of the **lesser of**:

- the gain itself; **or**
- the difference in the adjusted basis.

S-10 Income earned before 1960 and previously reported to New York State — **Due** to a different set of state income tax laws that applied to tax years ending before income 1960 (and any fiscal year ending during 1960), income that is reportable for federal purposes this year may have already been reported for New York purposes. This income is not subject to New York tax again.

If the partnership reported any income or gain on its federal return for this taxable year (including annuity income) that was properly reported as income on the New York State partnership return of this partnership for a tax year prior to 1960 (or a fiscal year ending in 1960), **then** include each partner's share of this income on line 13.

S-11 Cost depletion — New York State does not allow percentage depletion of natural resource holdings (see A-7 on page 4) but does allow cost depletion.

If you are making addition A-7 for any percentage depletion deducted for federal purposes, **then**:

- compute the cost depletion that would be allowed on that property by section 611 of the Internal Revenue Code without any reference to either section 613 or 613A of that code; **and**
- include each partner's share of that amount on line 13.

S-12 Special depreciation expenditures — The excess expenditures incurred in taxable years beginning before 1987 in connection with depreciable, tangible business property located in New York State may be carried over to the following taxable year or years and subtracted from the partner's federal adjusted gross incomes for that year(s) if those expenses exceeded your New York adjusted gross income before the allowance of those expenditures.

If the partnership incurred such expenditures, **then** complete Form IT-211, *Special Depreciation Schedule*, to determine each partner's share to include on line 13.

S-13 Income or gain from an insurance business operating as a member of the New York Insurance Exchange — **If** the partnership is operating an insurance business as a member of the New York Insurance Exchange, or if the partnership is a partner in such a business, **then** include on line 13 each partner's share of any income or gain reportable for federal purposes that is related to that business.

S-14 Gain to be subtracted from the sale of a new business investment included in federal income — **If** the partnership reported a capital gain on its federal income tax return from the sale of a new business investment that was issued to the partnership before 1988 **and** was held by the partnership for at least four years, **then** enter on line 13:

- **If** the investment was held at least four years but less than five years, each partner's share of 25% of that federal gain, **or**
- **If** the investment was held at least five years but less than six years, each partner's share of 50% of that federal gain, **or**
- **If** the investment was held at least six years, each partner's share of 100% of that federal gain.

S-15 Amount that was included in federal income because the IRC 168(f)(8) election was made (see A-10 for a definition of safe harbor leases) — If an amount was included in the partnership's federal income (except for mass transit vehicles) solely because the partnership made the safe harbor election on its federal return for agreements entered into before January 1, 1984, then include each partner's share of that amount on line 13.

S-16 Amount that could have been excluded from federal income had the IRC 168(f)(8) election not been made — (see A-10 for a definition of safe harbor leases) — If an amount could have been excluded from the partnership's federal income (except for mass transit vehicles) had the safe harbor election not been made on its federal tax return for agreements entered into before January 1, 1984, then include each partner's share of that amount on line 13.

S-17 Accelerated cost recovery property; year of disposition adjustment — If the partnership disposed of property during the tax year that was depreciated for federal purposes using ACRS, and if ACRS depreciation was not allowed for state purposes (see line 10 above), then the partnership must complete Part II of Form IT-399, *New York State Depreciation Schedule*, to figure each partner's share of the amount, if any, to be included on line 13.

Lines 14 and 15 should be used only for changes that apply to federal itemized deductions on the individual returns of partners and should exclude any amounts properly reportable on lines 9 through 13. Attach a statement identifying by item number any of the following changes that relate to partnership items of the partner's federal itemized deductions.

Line 14 Additions to federal itemized deductions

- A** Interest expense on money borrowed to purchase or carry bonds or securities whose interest is subject to New York State income tax but exempt from federal income tax, if this interest expense was not deducted on the federal return or subtracted on line 13.
- B** Ordinary and necessary expenses paid or incurred during the taxable year in connection with income, or property held to produce income, that is subject to New York State income tax but exempt from federal income tax, if these expenses were not deducted on the federal return or subtracted on line 13.
- C** Amortization of bond premium attributable to the taxable year on any bond whose interest income is subject to New York State income tax but exempt from federal income tax, if this amortization was not deducted on the federal return or subtracted on line 13.

Line 15 Subtractions from federal itemized deductions

- D** State, local and foreign income taxes (including unincorporated business taxes).
- E** Interest expense on money borrowed to purchase or carry bonds or securities whose interest is exempt from New York State income tax.

- F** Ordinary and necessary expenses paid or incurred in connection with income, or property held to produce income, that is exempt from New York State income tax, but only to the extent deducted in figuring your federal taxable income.
- G** Amortization of bond premium attributable to the taxable year on any bond whose interest income is exempt from New York State income tax, but only to the extent deducted in figuring your federal taxable income.
- H** Five percent of your deduction for interest, subject to the limitation amount, related to corporate acquisitions to the extent the interest was deducted in figuring the New York itemized deduction (section 615(c)(7) of the Tax Law). If this subtraction applies, complete Form IT-244, *Acquisition Information Report*. Attach a separate schedule to your return showing your computation.

Lines 16 and 17 Additional Information

Line 16 Enter the total amount of interest on indebtedness incurred to purchase or carry obligations or securities when the income from those securities is exempt from New York income tax and interest is included in investment interest expense required to be passed through to partners.

Line 17 Enter the total amount of New York adjustments to federal tax preference items for resident partners and nonresident partners who are not required to allocate. Submit a schedule listing each partner's share.

Part III - Partners' shares of credits and taxes on early dispositions

Enter each partner's distributive share of the credits computed at the partnership level. Also, enter each partner's distributive share of taxes on early dispositions on which the partners were allowed distributive shares of the credit. The taxes on early dispositions are to be computed at the partnership level. You must enter the total of the partners' shares of credits and taxes on early dispositions in the *Total All Partners* column. The following forms must be attached to Form IT-204 if they apply:

- Form IT-212, *Investment Credit*
- Form DTF-601, 601.1, 602 or 603, *Economic Development Zone Credits*

1987 was the last year that the special additional mortgage recording tax credit could be claimed. However, any unused credit from a prior year can be carried over. Include on line 21 the special additional mortgage recording tax credit carryover for 1995. Attach a schedule showing how the credit carryover was figured. See additions A-4 and A-5 on page 4 of these instructions.

Part IV - Nonresident partners' allocation

Note: This section does not have to be completed for corporate partners.

Lines 27 through 35 and line 40

The nonresident partners' New York amounts of federal items of income, gain, loss and deduction as shown on federal Form 1065, Schedules K-1

are computed using the business allocation percentage from line 8, or the separate book method. Do not include in the allocation any items of real property.

You must enter the total of the nonresident partners' allocation of each item of income and deduction in the *Total All Partners* column.

Line 36 is used to report a nonresident partner's distributive share of charitable contributions and itemized deductions as reported on his or her individual federal Form 1040. If itemized deductions are reported on line 36, they must be reported at 100%. Attach a detailed schedule of these deductions.

Line 37 and 38

A partner with tax preference items shown on line 37 and New York adjustments to federal tax preference items on line 38 may be required to file Form IT-220, *Minimum Income Tax*. See Form IT-220 and instructions.

For each nonresident partner only, submit a schedule listing the tax preference items and New York adjustments derived from or connected with New York State sources that are included in the amounts reported on lines 37 and 38.

Line 39

See Federal Form 1065, Schedules K-1 for the amount of investment interest expense to be included on federal Form 4952.

Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 22, 26, 26-A, 26-B, 30, 30-A and 30-B of the Tax Law, Article 2-E of the General City Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer tax liabilities due the state and city of New York and the city of Yonkers. We will also use this information for certain tax offset and exchange of tax information programs authorized by law, and for any other purpose authorized by law.

Information concerning quarterly wages paid to employees and identified by unique random identifying code numbers to preserve the privacy of the employees' names and social security numbers will be provided to certain state agencies for research purposes to evaluate the effectiveness of certain employment and training programs.

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

This information will be maintained by the Director of the Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829; from areas outside the U.S. and Canada, call (518) 485-6800.