



# Instructions for Form IT-203-S

Group Return for Nonresident Shareholders of New York S Corporations

## General information

A New York S corporation (*S corporation*) that has any income derived from or connected with New York sources may be granted approval to file Form IT-203-S, *Group Return for Nonresident Shareholders of New York S Corporations*. A *Group Return for Nonresident Shareholders of New York S Corporations* may be filed only if the S corporation has 11 or more qualified nonresident shareholders who elect to file on a group return for each year. All qualified shareholders 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 tax return filing requirements. Accordingly, if a qualified shareholder elects to participate in the group return, the shareholder is not required to file an individual New York State nonresident personal income tax return for the tax year.

## Approval to file a group return

An S corporation that wishes to file a group return on behalf of its qualified electing shareholders must request permission to do so by submitting an application on Form PR-99, *Application for Permission to File a Group Return*. Form PR-99 must be submitted to: **Registration and Data Services Bureau, New York State Tax Department, Building 8, Room 431, W A Harriman Campus, Albany NY 12227**. You must file Form PR-99 no later than the 30th day 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 PR-99, the Tax Department will determine whether permission will be granted and will notify the S corporation accordingly. If approval is granted, the S corporation 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 final group return, 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). However, the S corporation must maintain at least 11 participating shareholders 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 shareholders could be subject to late-filing or late-payment penalties.**

The approval to file a group return will not be retroactively revoked after the return has been filed simply because the S corporation fails to maintain 11 qualified electing shareholders.

For example, if an S corporation filed a group return for 13 qualified electing nonresident shareholders for tax year 1998, and it is subsequently determined that three of the shareholders did not qualify to be included on the group return, the approval to file the group return for 1998 will not be revoked. However, approval to continue filing any further group returns for future years will be revoked unless the S corporation has 11 or more qualified electing shareholders for those years.

**Reinstatement:** If an S corporation 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 S corporation and the special New York identification number. In addition, if the S corporation 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 PR-99. Form PR-99 must be submitted no later than the 30th day following the close of the first tax year for which reinstatement is requested.

## Group agent and powers of attorney

An S corporation that requests approval to file a group return must appoint one shareholder 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 shareholders 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 notices of deficiency and notice and demands, will be sent to the group agent as well as to the individual shareholder involved. In addition, 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, etc.

If the S corporation changes group agents, it must notify the Tax Department immediately at the address shown above. In addition, if the S corporation is required to submit powers of attorney, as described below, the notice must be accompanied by new powers of attorney for all participating shareholders.

The following rules apply to the submission of powers of attorney. Form PR-99 must be accompanied by an individual power of attorney (however, see *Note* below) for each qualified nonresident shareholder 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 shareholder in the filing of the group return. If, subsequent to the application date, an additional shareholder elects to participate in the group return, a power of attorney for that shareholder must be attached to the first group return on which the shareholder is included. If an S corporation requests reinstatement of approval to file a group return (see *Reinstatement* above), the S corporation must also resubmit powers of attorney as previously described.

**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 shareholders, if acceptable to the Tax Department, may be submitted in lieu of individual powers of attorney. If you wish to submit other evidence, attach a statement to Form PR-99 describing the evidence you wish to submit. We will notify you whether or not the evidence is acceptable. The filing of Form DTF-350, *Group Affidavit*, in accordance with the instructions of that form, is acceptable evidence which may be submitted in lieu of individual powers of attorney.

### Qualified nonresident shareholder

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

- the shareholder is a nonresident of New York State for the entire tax year;
- the shareholder did not maintain a permanent place of abode in New York State at any time during the tax year;
- the shareholder or the shareholder's spouse must have no income derived from New York sources other than the shareholder's prorata share of S corporation income, loss, and deduction, with New York additions and subtractions, allocated to New York or other income derived from certain New York sources described below;
- the shareholder or the shareholder's spouse cannot be 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; and
- the shareholder must waive the right to claim the New York standard deduction or itemized deduction, the New York dependent exemption, any New York State credits, and any carryback or carryover of a New York State net operating loss or capital loss.

If both a husband and wife are shareholders in the same S corporation, 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 shareholder or a shareholder's spouse receives wages from the S corporation, neither may participate in the group return.

If a shareholder, or shareholder's spouse, has other New York source income only from a partnership, another S corporation, professional athletic team, or other group or organization that files a group return and (1) the shareholder, or shareholder's spouse, participates in the other group return(s) and (2) the shareholder, or shareholder's spouse, does not participate in more than 10 group returns for the taxable year, the shareholder may be included on the S corporation's group return.

**Note:** In the case of a shareholder and a shareholder's spouse who are both participating in group returns, the 10-group return limitation is determined individually (i.e., the shareholder may participate in up to 10 group returns, and the shareholder's spouse may participate in up to 10 group returns).

### Electing to participate in the group return

A qualified nonresident shareholder 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 shareholder's inclusion in the group return constitutes notice to the Tax Department that the shareholder is electing to participate in the group return.

A shareholder 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 subsequently determined that a shareholder included in the group return did not meet the definition of a qualified nonresident shareholder for the

tax year, the shareholder would be required to file an amended return on an individual basis.

An S corporation filing a group return must attach a list showing the name (in either alphabetical or social security number order), and social security number of each shareholder who will be included on the group return to its New York State S corporation return.

### Estimated tax payments

An S corporation that has received approval to file a group nonresident return may also elect to file group estimated tax installments on behalf of its qualified electing nonresident shareholders.

The group installments are filed on Form IT-2105, *Estimated Income Tax Payment Voucher*. The form must show the name and address of the S corporation and the special New York identification number assigned to the S corporation. Enter on Form IT-2105 the total estimated 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 shareholder.

If a qualified nonresident shareholder who was included in the group estimated tax decides not to participate in the group return, or if the S corporation 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 S corporation;
- the special New York identification number assigned to the S corporation;
- the shareholder's name, address, and social security number;
- the amount of estimated tax paid on the shareholder's behalf; and
- a request that the payment or payments be transferred to an individual estimated tax account in the shareholder's name.

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

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

If a shareholder who was included in the group estimated tax notifies the group agent after February 15, 1999, but before April 15, 1999, the group agent should notify the Tax Department immediately, using the procedure described above. In these situations, the individual shareholder may wish to request an extension of time to file to ensure that the estimated tax payment will be properly credited to the individual account.

## Amended return or federal change

An amended group return must be filed if an amended federal return is filed by the S corporation, or if a federal audit of the S corporation changes any of the S corporation 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 S corporation 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 S corporation concedes the federal audit changes. If the S corporation does not concede the federal audit changes, attach a signed statement explaining why.

## Specific instructions

### Form IT-203-S

#### Name and address box

Enter in the spaces at the top of the return the legal name, trade name (if different from legal name), address, and employer identification number of the S corporation exactly as these items will appear on its New York State S corporation return. In addition, enter the special New York identification number in the box indicated.

**Note: You must complete Form IT-203-S-ATT before you can complete lines 1 through 5 of Form IT-203-S.**

#### Line 4

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 **1998 IT-203-S** on it. Do not send cash. See *Where to file* below.

#### Line 5

The amount overpaid will automatically be applied to your 1999 estimated tax. This amount **cannot** be refunded to you.

#### Signature

This form must be signed by the group agent on behalf of the participating shareholders. If used, a paid preparer must also sign the return and fill in the other information required.

#### When to file

You may file Form IT-203-S at any time after January 1, 1999, but not later than the filing deadline of April 15, 1999. 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 S corporation may request an extension to file the group return using Form IT-370, *Application for Automatic Extension of Time to File for Individuals*. Form IT-370 must show the special identification number assigned to the S corporation. The S corporation must also attach to Form IT-370 a list showing each participating shareholder's name (in either alphabetical or social security number order), address, and social security number.

If the S corporation needs additional time to file the group return, it may request an additional extension of time using Form IT-372, *Application for Additional Extension of Time to File for Individuals*. Form IT-372 must show the special New York identification number assigned to the S corporation and must be signed by the group agent. A list of the participating shareholders is not required to be attached to Form IT-372.

## Where to file

The group return must be filed with: **NEW YORK STATE INCOME TAX, W A HARRIMAN CAMPUS, ALBANY NY 12227.**

## Private Delivery Service

The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance, will be treated as a postmark, and that date will be considered to be the date of delivery in determining whether your return was filed on time. The private delivery service can tell you how to get written proof of this date.

The current designated delivery services are:

1. Airborne Express (Airborne):
  - Overnight Air Express Service
  - Next Afternoon Service
  - Second Day Service
2. DHL Worldwide Express (DHL):
  - DHL Same Day Service
  - DHL USA Overnight
3. Federal Express (FedEx):
  - FedEx Priority Overnight
  - FedEx Standard Overnight
  - FedEx 2 Day
4. United Parcel Service (UPS):
  - UPS Next Day Air
  - UPS Next Day Air Saver
  - UPS 2nd Day Air
  - UPS 2nd Day Air A.M.

## Form IT-203-S-ATT

You must complete and attach Form IT-203-S-ATT. Use as many forms as you need to list all qualified nonresident shareholders participating in the group return. Enter the column totals for all attachment sheets on the last attachment form.

**Note:** You may computer-generate Form IT-203-S-ATT, provided it conforms substantially to the official form.

**Column C** – Enter the shareholder's pro rata share of federal items reported on federal Schedule K-1 that represent business income subject to the business allocation percentage under Article 9-A.

**Column D** – Use the business allocation percentage determined under Article 9-A to determine the amount to be entered in column D.

**Column E** – Enter the shareholder's pro rata share of federal items reported on federal Schedule K-1 that represent investment income subject to the investment allocation percentage under Article 9-A.

**Column F** – Use the investment allocation percentage determined under Article 9-A to determine the amount to be entered in column F.

**Column H** – Enter the amounts shown on lines 8 and 10 of federal Schedule K-1 that represent deductions not allowed in computing the amount shown in column G. Do not include in this column any deductions that are required to be treated as itemized deductions on the shareholder's federal income tax return.

**Column I** – The amount in column H is allocated to New York State in the same manner as its related federal item of income, gain, or loss was allocated. If a deduction item included in column H does not relate to a particular federal item, it is allocated to New

York State based upon the percentage of total federal S corporation income, gain or loss that was allocated to New York State.

**Column J** – Determine the portion of each New York addition and subtraction shown on Form CT-3-S, lines 76-80; Form CT-4-S, lines 41-45; or Form CT-34-SH, lines 1-5, whichever is applicable, that is allocated to New York State. An addition or subtraction is allocated to New York State in the same manner as the federal items of income, gain, or loss to which it relates. Enter the total amount of the additions and subtractions allocated to New York State as a net addition or subtraction.

**Column P** – Place an **X** in this column if the shareholder is participating in another group return.

### 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 8, 9, 9-A, 13, 19, 27, 32, 33, and 33-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer corporate tax liabilities under the Tax Law, for certain tax refund offsets, and for any other purpose authorized by law.

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 Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

### Need Help?

**Telephone Assistance** is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

**Fax-on-Demand Forms Ordering System** - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

### Internet Access - <http://www.tax.state.ny.us>

Access our website for forms, publications, and information.

**Hotline for the Hearing and Speech Impaired** - If you 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. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), 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.

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