New York State Department of Taxation and Finance

Instructions for Form IT-203-TM

Group Return for Nonresident Athletic Team Members

IT-203-TM-I

General information

A professional athletic team whose employees perform services in New York State may be granted approval to file Form IT-203-TM, *Group Return for Nonresident Athletic Team Members*, on behalf of its qualified members (see below) who elect to participate in the group return. There is no minimum number of qualified electing members required to file a group return. However, all qualified electing members must have the same accounting period.

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

A *professional athletic team* is any professional sports team, including, but not limited to, a baseball, basketball, football, soccer, or hockey team. A *team* is a single organization represented by a number of persons associated together in collective play and supporting duties. Affiliated teams that compete in different leagues, such as a major and a minor league team, are considered separate teams for purposes of filing a group return.

A *member* of a professional athletic team includes any employee who is an active player or a player on the disabled list. In addition, a *member* also includes any other employee, such as a coach, manager, trainer, etc., who travels with the team and performs services for the team on a regular basis.

Approval to file a group return

A professional athletic team that wishes to file a group return on behalf of its qualified electing members 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 team accordingly. If approval is granted, the team will be issued a special New York 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.

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 members could be subject to late-filing or late-payment penalties, or both.

Reinstatement: If a team 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 team and the special New York identification number. In addition, if the team 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 team that requests approval to file a group return must appoint a common agent as the *group agent*. The group agent must be an individual. The group agent does not have to be directly associated with the team (that is, an officer or employee of the team). However, the team and all qualified electing members must have the same group agent. The group agent must have legal authority to act as an agent in matters relating to the group return for all members 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 member involved. The group agent will be personally liable only for those penalties relating to making and signing an erroneous, false, or fraudulent return, but only if the agent was actually responsible for the error.

Form TR-99 must be accompanied by an individual power of attorney (however, see *Note* below) for each qualified nonresident member 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 member in the filing of the group return. If, after the application date, an additional member elects to participate in the group return (or a subsequent year group return), a power of attorney for that member must be attached to the first group return on which the member is included. If a team requests reinstatement of approval to file a group return (see *Reinstatement* above), the team must also resubmit powers of attorney as previously described.

If the team changes group agents, it must notify the Tax Department immediately at the previously stated address. The notice must also be accompanied by new powers of attorney for all participating members (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 members, 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. 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 that may be submitted instead of individual powers of attorney.

Qualified member

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

— The member must be a nonresident individual of New York State for the entire tax year.

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

— Neither the member nor the member's spouse has income derived from New York sources other than (1) compensation received for services performed as a member of a professional athletic team or (2) other income derived from certain New York sources described below.

— Neither the member nor the member'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 member 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 the allowable exclusion for purposes of the Yonkers nonresident earnings tax.

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

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

If a member performed services for more than one professional athletic team, the member must participate in a group return for each team. If the member is not participating in a group return for one team, or one of the teams is not filing a group return for the year, the member may not participate in any team's group return.

If both a husband and wife are members of a professional athletic team(s), both spouses may be included on their respective team's group return if they meet the qualifications described above and both spouses elect to participate. Unless **both** spouses elect to participate, **neither** spouse may participate in a group return.

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

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

Electing to participate in the group return

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

A member 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 member included in the group return did not meet the definition of a qualified nonresident member for the tax year, the member would be required to file an amended return on an individual basis.

Yonkers nonresident earnings taxes

If the team files a group New York State return **and** its nonresident members perform services within Yonkers, the team **must** also file a group Yonkers nonresident earnings tax return. The group Yonkers return must include all qualified nonresident members who participate in the group state return. If a member does not participate in the group state return, the member may not participate in the group city return.

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 member expects to owe sales and use tax (see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return)*, the member 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 member owes.

Estimated income tax payments

A team 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 nonresident members.

Note: Professional athletic teams located in New York State are required to withhold state and city income taxes from wages paid to their employees. For these teams, group estimated income tax installments may not be substituted for the required income tax withholding.

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 team and the special New York identification number assigned to the team. 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 member.

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 team member 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 member who was included in the group estimated income tax decides not to participate in the group return, or if the team 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 team

— the special New York identification number assigned to the team

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

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

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

If more than one member included in the group estimated income tax will not be participating, the above member information should be provided for each member. 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 member files an individual personal income tax return before the transfer becomes effective, the member will not get credit for these payments when the return is processed, and a tax-due notice will be issued to the member. Therefore, this time period should be taken into account when filing the member's individual return.

If a member 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 these

situations, the individual member may wish to request an extension of time to file to insure that the estimated income tax payment will be properly credited to the individual's account prior to the individual's return being filed.

Specific instructions

Form IT-203-TM

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 team. The legal name is the name in which the team owns property or acquires debt. Enter the trade name or dba (doing business as) name if different from the legal name. In addition, enter the special New York identification number in the box indicated.

Note: You must complete **Form IT-203-TM-ATT-A,** and if applicable, **Form IT-203-TM-ATT-B, before** you can complete lines 1 through 12 of Form IT-203-TM.

Line 11 — If you owe more than one dollar, attach your payment to the front of the return. Make your check or money order payable to ***New York State Income Tax***, and write your special New York identification number and ***2008 IT-203-TM*** on it. Do not send cash. See *Where to file* below.

Line 12 — 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 members. If you use a paid preparer, he or she must also sign the return and fill in the other information requested.

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-TM 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 team may request an extension 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 New York identification number assigned to the team. The team must also attach to Form IT-370 a list showing each participating member's name (in either alphabetical or social security number order), address, and social security number.

Where to file

The group return must be filed with:

NYS 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-TM-ATT-A and IT-203-TM-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 you are required to file a Yonkers group return. Attach the applicable schedules to Form IT-203-TM.

Use as many schedules as you need to list all qualified nonresident members 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 each member's total duty days (see *Duty days* on page 4) spent both within and outside New York State during the tax year. If the member was a member of more than one team during the year, include only the total duty days for this team.

Column D — Enter the number of each member's duty days (see *Duty days* on page 4) spent within New York State during the tax year. If the member was a member of more than one team during the tax year, include only the duty days spent in New York State for this team.

Column F — Enter each member's total compensation (see *Total compensation* on page 4) received during the tax year. If the member was a member of more than one team during the year, enter only the compensation paid by this team.

Column I — For each participating member who had New York State tax withheld, submit federal Form W-2, *Wage and Tax Statement*, with the group return. The wage and tax statements must be arranged in alphabetical or social security number order.

Column J — Enter each member'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 team group return that was applied to the member's estimated income tax.

Column N — Mark an ***X*** in this column if the member performed services for another team(s) during the tax year, or is participating in a group return of a partnership, New York S corporation, or other group. **Note:** The member **must** be participating in a group return for the other team(s) in order to participate in the group return for this team.

Schedule B

Column C — Enter each member's total duty days (see *Duty days* on page 4) spent both within and outside Yonkers during the tax year. If the member was a member of more than one team during the year, include only the total duty days for this team.

Column D — Enter the number of each member's duty days (see *Duty days* on page 4) spent within Yonkers during the tax year. If the member was a member of more than one team during the tax year, include only the duty days spent in Yonkers for this team.

Column F — Enter the amount of each member's total compensation (see *Total compensation* on page 4) that is treated as wages subject to withholding for **federal** income tax purposes. If the member was a member of more than one team during the tax year, enter only the amount of wages subject to withholding for this team.

Column I — For each participating member who had Yonkers tax withheld, submit federal Form W-2 with the group return. The wage and tax statements must be arranged in alphabetical or social security number order.

Duty days

Duty days means all days during the tax year from the beginning of the team's official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are to be taken into account in the year they occur even if the period previously described covers more than one tax year. In addition, duty days also include days on which the member is performing a service for the team which fall outside the period previously described, such as days participating in instructional leagues or promotional caravans. Performing a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

Days for which the member is not compensated and the member is not performing services for the team in any manner are not treated as duty days. These days would include days where a member has been suspended without pay and is prohibited from performing any services for the team.

New York State or Yonkers duty days means all days spent within the state or Yonkers for game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete. Days on the disabled list are not considered New York State or Yonkers duty days unless the member is engaged in rehabilitation duties at a facility located in the state or Yonkers or the member is otherwise performing services for the team in New York. Travel days that do not involve either a game, practice, team meeting, promotional caravan, or other similar team event are not considered New York State or Yonkers duty days. This is true even if the member is present in the state or Yonkers on that day. However, those days are considered as duty days for purposes of the *Total duty days* spent in and out of the state or Yonkers.

Total compensation

Total compensation means the total compensation received by the member during the tax year for services rendered from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete. It also includes compensation received during the tax year for services performed by the member outside the period previously described, such as compensation for participation in instructional leagues or promotional caravans.

Compensation includes, but is not limited to, salaries, wages, bonuses (however, see bonuses below), and any other type of compensation paid during the year for services performed for the team. Compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered for the team.

Bonuses earned as a result of play during the season, such as performance bonuses, bonuses paid for championship, playoff or bowl games, and bonuses for selection to all-star or other honorary positions are includable in total compensation. In addition, bonuses paid for signing a contract must also be included in total compensation unless **all** of the following conditions are met:

— The payment of the signing bonus is not conditional upon the signee playing any games for the team or performing any subsequent services for the team or even making the team.

— The signing bonus is paid separately from the salary and any other compensation.

— The signing bonus is not refundable.

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.

To order forms and publications:	1 800 462-8100
Refund status:	1 800 443-3200
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