

Group Returns for Nonresident Athletic Team Members

For tax years 1996 and thereafter, a professional athletic team may be granted approval to file a group nonresident return on behalf of its qualifying nonresident members. The following is a complete explanation of the group return rules.

General Information

A professional athletic team whose employees perform services in New York State may be granted approval to file a *Group Return for Nonresident Athletic Team Members* on behalf of its qualifying members (see below) who elect to participate in the group return. There is no minimum number of qualifying 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, New York City 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, New York City 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 must request permission to do so by submitting an application on Form PR-99. Form PR-99 must be submitted to: **Assistant Director, Registration and Licensing Services Bureau, New York State Department of Taxation and Finance, Building 8, Room 408, W A Harriman Campus, Albany, NY 12227.** You must file Form PR-99 no later than the last day of the initial tax year for which you are requesting to file a group return. However, see **Special Rule** below.

Special Rule: A request to file a group return that will initially be effective for tax year 1996

may be submitted no later than February 28, 1997. Requests that will initially be effective for tax years beginning after 1996 must be submitted no later than the last day of the initial tax year.

After receipt of a properly completed Form PR-99, the 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 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.

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.

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 Department of its decision in writing at the above 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 PR-99. Form PR-99 must be submitted no later than the last day 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 can be an individual or individuals, or a corporation, partnership or other entity. The group agent does not have to be the team or an officer or employee of the team. However, the team and all qualifying electing members must have the same group agent. The group agent is required to sign the group return and any communications from the 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 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, etc.

The initial application to file a group return must be accompanied by an individual power of attorney 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 subsequent to the application date, an additional member elects to participate in the group return (or a

subsequent year's 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 on page 2), the team must also resubmit powers of attorney as previously described.

If the team changes group agents, it must notify the Department immediately at the address on page 1. The notice must also be accompanied by new powers of attorney for all participating members.

Qualified Nonresident Member

A qualified nonresident 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;
- the member or member's spouse must have no income derived from New York sources other than compensation received for services performed as a member of a professional athletic team;
- the member or member's spouse cannot be subject to the New York State or New York City minimum income tax or the New York State or New York City separate tax on the ordinary income portion of a lump-sum distribution; and
- 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 credits and the allowable exclusion for purposes of the New York City and Yonkers nonresident earnings taxes.

If a member performed services for more than one professional athletic team during the tax year, 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 if 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.

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 and, if not done previously, by executing a power of attorney as described on page 2. 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 that 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 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.

City of New York and City of Yonkers Nonresident Earnings Taxes

If the team files a group New York State return **and** its nonresident members perform services within New York City or Yonkers, the team **must** also file a group New York City and/or Yonkers nonresident earnings tax return. The group City 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.

Filing Requirements and Tax Computation

The New York State, New York City and Yonkers group return must be filed on Form IT-203-TM, *Group Return for Nonresident Athletic Team Members*. Form IT-203-TM must be filed no later than April 15th of the following year. (However, see Extension of Time below.)

Each participating member's New York State personal income tax is computed by multiplying the member's total compensation allocable to New York State by the highest effective rate of New York State personal income tax for the applicable tax year (e.g., 7.125% for 1996). No deductions or credits are allowed in computing the tax.

Each participating member's New York City or Yonkers nonresident earnings tax is computed by multiplying the member's total compensation that is treated as wages subject to withholding for **federal** income tax purposes, allocable to each city, by the city's nonresident earnings tax rate applicable to wages for the tax year (e.g., .45% for New York City and .50% for Yonkers for tax year 1996). The allowable exclusion is not allowed in computing either tax.

Any overpayment of New York State, New York City or Yonkers taxes **cannot** be refunded. Instead, it will be applied to the respective member's estimated tax for the following tax year.

A member's total compensation (including total compensation that is treated as wages subject to withholding for federal income tax purposes) is allocable to New York State, New York City or Yonkers based upon duty days spent inside and outside the state or city during the tax year. See *Duty Days* on page 6 and *Total Compensation* on page 7.

Extension of Time

If the team cannot meet the deadline for filing Form IT-203-TM, it may request an automatic four-month extension to file by using Form IT-370, *Application for Automatic Extension of Time to File for Individuals*. Form IT-370 must show the special New York identification number assigned to the team and must be signed by the group agent. The team must also attach to Form IT-370 a list showing each participating member's name (in alphabetical order), address and social security number.

If the team 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 team and must be signed by the group agent. However, a list of the participating members need not be attached to Form IT-372.

Estimated Tax Payments

A team that has received approval to file a group nonresident return may also elect to file group estimated tax installments on behalf of its qualifying 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 tax installments may not be substituted for the required tax withholding.

The group installments are filed on Form IT-2105, *Estimated Tax for Individuals*. The form must show the name and address of the team and the special New York identification number assigned to the team. In addition, the team must attach a schedule to the first group installment showing the names of the participating members, their addresses, social security numbers and the amount of estimated tax paid for each participating member. This must be done in columnar form and in alphabetical order for each participating member.

If a qualified nonresident member who was included in the group estimated 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, city estimated tax paid on the member's behalf; and
- a request that the payment or payments be switched to an individual estimated tax account in the member's name.

If more than one member included on the group estimated tax will not be participating, the above member information should be provided for each member. The notification must be mailed to:

New York State Tax Department
Estimated Tax Unit
W A Harriman Campus
Albany, NY 12227-0125

This switch of estimated tax payments could take two to three weeks to become effective. If the member files an individual personal income tax return before the switch 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 tax notifies the group agent after February 15 but before April 15 of the year in which the return is due, the group agent should notify the Department immediately, using the procedure described previously. In these situations, the individual member may wish to request an extension of time to file to insure that the estimated tax payment will be properly credited to the individual account.

Duty Days

Duty days means all days during the tax year from the beginning of the team's official pre-season 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." Rendering 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, New York City and Yonkers duty days means all days spent within the state or city 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 state or city duty days unless the member is engaged in rehabilitation duties at a facility located in the state or city 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, New York City or Yonkers duty days. This is true even if the member is present in the state or city 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 city.

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 pre-season 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 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: 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 includible 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; and
- the signing bonus is not refundable.