



Instructions for Form IT-204

Partnership Return

IT-204-I

Changes for 1998

Investment credit - Financial services industry

Partners of partnerships engaged in the financial services industry can now claim an investment credit. To qualify for the credit, the partnership must have tangible personal property placed in service on or after October 1, 1998, located in New York State which the partnership uses:

- in connection with the purchase or sale of stocks, bonds or other securities as a broker or dealer or,
- in the partnership's trade or business to provide investment advisory services for a regulated investment company, or lending, loan arrangement, or loan origination services to customers relating to the purchase or sale of securities.

For more information, see Form IT-252 and instructions.

Employment of persons with disabilities credit

Partners of partnerships can now claim a credit for employment of persons with disabilities. The credit is available if the partnership employs certain persons with disabilities. For more information, see Form IT-251 and instructions.

Alternative fuels credit

Partners of a partnership can now claim the alternative fuels credit for electric vehicles, clean-fuel vehicle property and clean-fuel vehicle refueling property placed in service by the partnership during the taxable year. The alternative fuels credit is applicable to property placed in service in a tax year beginning after 1997 and before 2003. For more information, see Form IT-253 and instructions.

Federal Form 1065-B

If you are filing new federal Form 1065-B, you must file Form IT-204 for New York purposes.

General Information

The income allocation method for purposes of the New York City unincorporated business tax does not correspond to the allocation method required to be used by nonresident partners under the New York City nonresident earnings tax. Every partnership doing business in New York City and having a partner who is a nonresident of New York City **must use Form IT-204-NYC** to allocate its net

earnings from self-employment to New York City. The allocation computed on Form NYC-204, *City of New York Unincorporated Business Tax Partnership Return*, may **not** be used.

Partners of a partnership that owns land and buildings located in New York State that are used in agricultural production may be entitled to the farmers' school tax credit for their share of the school district property taxes which the partnership pays on the land and buildings. In addition, if the partner claimed this credit in 1997 and the partnership converted part or all of its qualified agricultural property to nonqualified use in 1998, the partner may have to recapture all or part of the 1997 credit. For more information, see the instructions for Schedule B, Part II, and Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*.

The partners of a partnership may be allowed a credit if the partnership restores an historic barn. The amount of the credit is 25% of the qualifying rehabilitation expenditures paid or incurred to restore an historic barn located in New York State. For more information, see the instructions for Form IT-212-ATT, *Claim for Historic Barn Rehabilitation Credit and Employment Incentive Credit*.

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, are 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. Also, effective July 21, 1997, certain trust companies that are established and regulated under section 102-A of the New York State Banking Law are able to organize

themselves as limited liability trust companies (LLTCs). The LLTC option is available only to Article 3 trust companies that do not receive deposits from the general public and are exempt from obtaining insurance of deposits and share accounts. Any LLIC or LLTC 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 LLTC's, 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 1998 or other fiscal year beginning in 1998. 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 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, gain, loss, or deduction 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.

A partnership is not considered to be engaged in a business, trade, profession, or occupation, and is therefore not required to file, for any tax year in which it neither receives income nor incurs any expenses treated as deductions or credits for Federal income tax purposes.

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. However, include in Schedule B, the totals for all partners. Include on Form IT-204-ATT only a list of the 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 III.

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 1998 are due April 15, 1999. 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 or Form 1065-B. 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

Private Delivery Services

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. (Designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need Help?* below for information on ordering forms and publications.) If you use **any** private delivery service, address your return to: **State Processing Center, 431C Broadway, Menands, NY 12204.**

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For tax 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.

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 or 1065-B, Schedules K-1 and all supporting attachments to Form IT-204, including Form IT-204-ATT.

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. Include in Schedule B the totals for all partners. Include on Form IT-204-ATT only a list of the 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, 1998, or for the fiscal year of the partnership which began in 1998. 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.

Filling in your tax return

Form IT-204 has been designed to let us use the latest scanning and image-processing equipment. Rectangular boxes and white entry areas have been printed on the form to guide you in making your typewritten or handwritten entries. This will enable our scanning equipment to more accurately read your return and let us process it more efficiently. Please spend a moment reviewing the method below for making your entries:

- Please print (using a blue or black ballpoint pen; no pencils, please) or type all "X" marks and money amounts in the boxes or spaces provided.
- Do not use dollar signs, commas, decimal points, dashes or any other punctuation marks or symbols. All necessary punctuation has been printed on the form and amounts are rounded to dollars only.
- Write your numerals like this:

1	2	3	4	5	6	7	8	9	0	X
---	---	---	---	---	---	---	---	---	---	---

- Make your money amount entries in the white areas allowing one numeral for each box.

Example: If your entry for line 1, column A is \$23,750,500., your money field entry should look like this:

...	1	23,750,500
-----	---	------------

- Leave **blank** any spaces and boxes that do not apply to you.

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 G.

For question F, enter the number of partners in the partnership that are required to be listed on Form IT-204-ATT. See the instructions for Form IT-204-ATT on page 10.

If you have any other New York tax accounts, check the appropriate boxes on lines 1 and 2 of question G 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 either the Indian employment credit, a work opportunity credit, or an empowerment zone employment 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 return. **You are not required to give your telephone number.**

Schedule B

Complete Parts I and II, and include the totals for all partners of the partnership.

You must complete Part III 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 total 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 III the total items of partnership income, gain, loss and deduction determined to be from New York. 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 III the total amount of all nonresident partner's distributive shares 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 total of all nonresident partners' shares of any item that is derived from or connected with New York sources (with the exception of the real property items).

Each partner's share of the amount shown under the total for all nonresident partner's (Part III) 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 individual nonresident 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 total of all nonresident partners' specifically allocated items on a separate schedule. Follow the same format used for Part III.

Part I - Partners' 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.

You must enter only the total New York modifications to federal items in the *Total All Partners* column. However, you must still inform each partner of their share of the total amount for each item reported in Schedule B since the partners need this information to complete their individual tax returns.

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

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 the total deduction on line 9. For example, if the partnership deducted New York City unincorporated business tax on federal Form 1065 or Form 1065-B, include that tax deduction 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 IRC 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 that 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 partnerships' federal income, **then** include 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 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 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 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 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 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 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 the 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 the deduction. See subtraction S-11.

A-8 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 the amount that had previously been subtracted.

A-9 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 IRC as it was in effect for agreements entered into prior to January 1, 1984, **then** include those deductions on line 11. **Also see A-10, S-14, and S-15.**

A-10 Safe harbor leases; election for qualified leased property (see A-9 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 IRC as it was in effect for agreements entered into prior to January 1, 1984, **then** include on line 11 the income that the partnership would have included in its federal ordinary income if such election had not been made. **Also, see A-9, S-14, and S-15.**

A-11 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 the amount, if any, to include on line 11.

A-12 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 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.

A-13 Qualified emerging technology investments (QETI) — If the partnership elected to defer the gain from the sale of QETI, **then** the partnership must include on line 11 the amount previously deferred when the reinvestment in the qualified emerging technology company which qualified the partnership for that deferral is sold. See subtraction S-17 on page 8.

Subtractions

Line 12 New York depreciation

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 IRC as it was in effect on December 31, 1980 (e.g., straight line, declining balance, etc.). See line 10 on page 5.

If you had this type of property, **then complete Part I of Form IT-399, New York State Depreciation Schedule**, to figure the 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 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 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 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 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 pages 5 and 6), **and if** the partnership incurred interest expense on loans used to purchase those obligations that was not deductible for federal purposes, **then** include 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 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 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 an Indian employment credit, a work opportunity credit, or an empowerment zone employment credit for wages and salaries paid during the tax year, **then** include 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 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 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 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 6) 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 IRC without any reference to either section 613 or 613A of that code; and
- include 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 the amount to include on line 13.

S-13 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, 25% of that federal gain, or
- If the investment was held at least five years but less than six years, 50% of that federal gain, or
- If the investment was held at least six years, 100% of that federal gain.

S-14 Amount that was included in federal income because the IRC 168(f)(8) election was made (see A-9 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 that amount on line 13.

S-15 Amount that could have been excluded from federal income had the IRC 168(f)(8) election not been made (see A-9 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 that amount on line 13.

S-16 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 on page 5), then the partnership must complete Part II of Form IT-399, *New York State Depreciation Schedule*, to figure the amount, if any, to be included on line 13.

S-17 Qualified emerging technologies investments (QETI) — The partnership may defer the gain on the sale of qualified emerging technology investments (QETI) that are:

- (1) held for more than 36 months; and
- (2) rolled over into the purchase of a QETI within 365 days.

Replacement QETI must be purchased within the 365-day period beginning on the date of sale. Gain is not deferred and must be recognized to the extent that the amount realized on the sale of the original QETI exceeds the cost of replacement QETI. The gain deferral applies to any QETI sold on or after March 12, 1998, that meets the holding-period criteria. The gain deferred must be added back in the year the replacement QETI is sold.

If the partnership elects to defer the gain from the sale of QETI, then include on line 13 the amount of the gain deferral to the extent the gain was included in federal taxable income. If purchase of

the replacement QETI within the 365-day period occurs in the same taxable year as the sale of the original QETI, or in the following taxable year and before the date the partnership return is filed, then report the deduction on that return. If purchase of the replacement QETI within the 365-day period occurs in the following taxable year and on or after the date the partnership return is filed, then the partnership must file an amended return to claim the deduction. In addition, each partner must file an amended personal income tax return to claim his or her share of the deduction.

A QETI is an investment in the stock of a corporation or an ownership interest in a partnership or limited liability company (LLC) that is a qualified emerging technology company. A QETI is also an investment in a partnership or an LLC to the extent that such partnership or LLC invests in qualified emerging technology companies. The investment must be acquired by the taxpayer as provided in Internal Revenue Code (IRC) section 1202(c)(1)(B), or from a person who acquired it pursuant to this section. IRC section 1202(c)(1)(B) requires the acquisition to be original issue from the company, either directly or through an underwriter, and in exchange for cash, services, or property (but not in stock).

A qualified emerging technology company is a company that is located in New York State, that has total annual product sales of 10 million dollars or less, and meets either of the following criteria:

- its primary products or services are classified as emerging technologies; or
- it has research and development activities in New York State and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation in the most recently published results from its Survey of Industry Research and Development, or any comparable successor survey, as determined by the Tax Department).

Lines 14 and 15 should be used only for modifications 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 modifications 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, 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.

Part II - Partners' Credit Information

Note: Although only the partnership totals for the following items are required to be reported on Form IT-204, the partnership must inform each partner of their distributive share of each item. The partners need this information to complete their individual tax returns.

Lines 18 through 32 — Enter the total credits and taxes on early dispositions, computed at the partnership level, on the appropriate lines. The following forms must be attached to Form IT-204 if they apply:

- Form DTF-601, 601.1, 602, 603, or 605, *Economic Development Zone Credits*
- Form IT-212, *Investment Credit*
- Form IT-251, *Credit for Employment of Persons with Disabilities*
- Form IT-252, *Investment Credit for the Financial Services Industry*
- Form IT-253, *Alternative Fuels Credit*

Line 33 — If the partnership owned qualified agricultural property during the tax year, enter the total acres of qualified property owned on line 33. Be sure to include the number of acres under buildings or structures that are qualified agricultural property. If the partnership was a partner in another partnership, or a beneficiary of an estate or trust that owned qualified agricultural property, also include the partnership's share of the acres of qualified property owned by the other partnership or estate or trust.

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings (except for buildings used by the partnership for residential purposes) that are located on the land and used or occupied to carry out agricultural production.

A structure or building qualifies if it is used (1) in the raising and production for sale of agricultural commodities, or (2) for the storage of agricultural commodities for sale at a future time, or (3) for the storage of supplies or for the storage or servicing of equipment necessary for agricultural production.

A structure or building is not qualified agricultural property if it is used for (1) the processing of agricultural commodities, or (2) the retail merchandising of agricultural commodities, or (3) the storage of commodities for the personal use of the partnership or its partners, or (4) the personal residence of any of the partners.

Note: In the case of the production of maple syrup, cider, and the sale of wine from a licensed farm winery as provided in Article 6 of the Alcoholic Beverage Control Law, buildings and structures used to process the sap into syrup, the apples into cider, or grapes into wine are considered qualified agricultural property even though the property is used in processing.

Processing means doing something to a farm commodity beyond what is needed to make it initially marketable. The mere sorting, washing, and packaging of commodities is not considered processing. A residence includes a house, mobile home, etc., and any other buildings associated with it, such as garages or sheds, that are used for residential purposes.

Note: Land and structures owned by the partnership and used in agricultural production are qualified agricultural property even if the agricultural production is carried on by someone else. For example, land and buildings owned by the partnership are rented to another person who actually uses the property for agricultural production. The land and buildings are qualified agricultural property for the partnership.

Do not include on line 33 any acres of property that were converted to nonqualified use during the tax year. *Conversion to nonqualified use* means an outward or affirmative act changing the use of the agricultural property. The idling, nonuse or sale of the property is not by itself a conversion.

Example 1: You sell 100 acres of land to a developer in tax year 1998. The developer actually builds a housing development on the land during the tax year, and as a result the land is no longer used in agricultural production. This would be considered a conversion to nonqualified use.

Example 2: You discontinue farming during 1998, but continue to hold the farm property for investment purposes. This would not constitute a conversion to nonqualified use.

Example 3: You sell qualified agricultural property to another person who continues to use the property in agricultural production. This would not constitute a conversion to nonqualified use.

For more information concerning qualified agricultural property, see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*.

Line 34 — If the partnership paid eligible taxes on qualified agricultural property during the tax year, enter the total amount paid on line 34. If the partnership was a partner in another partnership or the beneficiary of an estate or trust that paid eligible taxes during the year, also include on line 34 the partnership's share of eligible taxes paid by the other partnership or estate or trust.

Eligible taxes are real property taxes levied by a school district on qualified agricultural property **owned** by the partnership. Real property taxes levied by towns, villages, cities, or their municipal governments are not eligible taxes. Eligible taxes include school district taxes paid on qualified property which the partnership owns but rents to someone else. However, eligible taxes do not include school district taxes paid on qualified agricultural property the partnership rents from someone else, even if the rental agreement provides that the partnership must actually pay the taxes.

Real property taxes levied by a school district include all property taxes, special ad valorem levies and special assessments levied by a school district. Also included are taxes levied by a school district for the support of local libraries. Penalties and interest are not included.

If the partnership owns both qualified agricultural property and nonqualified agricultural property, and it receives only one school tax bill for all the property, it must apportion the total school taxes paid between the qualified and nonqualified property based upon the values of the property. The local assessor may be able to tell you the value of your qualified and nonqualified property. If the assessor is unable to provide this information, the partnership may use any other reasonable method, such as basing the value on the recent sale price of similar property in the area, to determine the value. In either case, the partnership should keep records to substantiate the allocation.

Do not include on line 34 school taxes paid on property converted to nonqualified use during the year. (See *conversion to nonqualified use* on page 9 under line 33.)

If the partnership continues to own the property after the conversion, and the converted property is included as part of the total school tax bill, the partnership may allocate the taxes to the converted property on the basis of the amount of acreage converted to the total acreage covered by the tax bill.

If the converted property is sold, the closing documents will show the amount of school taxes reimbursed to the partnership by the buyer. The partnership must reduce its current year's eligible taxes paid by the amount of these reimbursed taxes.

For more information concerning eligible taxes, see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*.

Line 35 — If the partnership owned qualified agricultural property during tax year 1997, and all or part of that property was converted to nonqualified use during tax year 1998, enter the number of acres of qualified agricultural property converted to non qualified use. For the definition of conversion to nonqualified use, see the instructions for line 33 on page 9.

Part III - Nonresident partners' allocation

Enter in this section the total amount of federal partnership income, gain, loss and deduction that is allocated to New York.

The federal items of income, gain, loss and deduction as shown on federal Form 1065 or Form 1065-B, Schedule K are allocated to New York 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 amount of each item of income and deduction allocated to New York in the *Allocated New York Amounts* column.

Line 45 — Is used to report the total charitable contributions and itemized deductions. If itemized deductions are reported on line 45, they must be reported at 100%. Attach a detailed schedule of these deductions.

Lines 46 and 47 — Enter the total amount of federal items of tax preference and New York adjustments allocated to New York.

Submit a schedule listing the tax preference items and New York adjustments derived from or connected with New York State sources.

Line 48 — See Federal Form 1065 or 1065-B, Schedule K for the amount of investment interest expense to be included on line 48. This item must be reported at 100%.

Instructions for Form IT-204-ATT

Complete Form IT-204-ATT by showing the name, address and the employer identification number of the partnership as it is shown on Form IT-204. Then provide each partner's: name and address, as it appears on Federal Schedule K-1, either the social security number or the employer identification number, the partner's ownership percentage in the partnership and check the residency status box(es), where applicable. You do not have to complete these boxes for any partner that is a corporation or another partnership. This information must be completed for each partner who was a member of the partnership at any time during the taxable year. However, if you are filing a return specifically because you have a New York resident partner, you need only list the resident partners. See the specific instructions on page 3. The number of partners on Form IT-204-ATT should agree with the number of partners listed at question F on the front of Form IT-204.

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 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.