

Group Returns for Nonresident Partners

For tax years 1996 and thereafter, certain new rules apply to the filing of a Group Return for Nonresident Partners (formerly referred to as a “Combined Return”). Partnerships with 35 or more qualifying partners who elect to participate may now file a group return. New power of attorney submission rules also apply to partnerships that first elect to file a group return after a certain date. In addition, the period of time for requesting permission to file a group return for 1996 has been extended.

Furthermore, starting with tax year 1996, new Form IT-203-GR, *Group Return for Nonresident Partners*, must be filed by partnerships that elect to file a New York State, New York City or Yonkers group return. The instructions contained in TSB-M-89-(6)I, *Combined New York Tax Returns for Nonresident Partners*, should not be used for tax years beginning after 1995.

The following is a complete explanation of the group return rules applicable to tax years beginning after 1995.

General Information

A partnership, including a limited liability partnership, limited liability investment company and a limited liability company that is treated as a partnership for federal income tax purposes, which is required to file a New York State partnership return and has any income derived from or connected with New York sources, may be granted approval to file a *Group Return for Nonresident Partners*. A *Group Return for Nonresident Partners* may be filed only if the partnership or limited liability company has 35 or more qualified nonresident partners or members (see below) who elect to file on a group return for each year. Hereafter, partners and members will be collectively referred to as partners. In addition, all qualified partners who elect to participate in the group return must have the same accounting period.

A 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 partner elects to participate in the group return, the partner is not required to file an individual New York State, New York City or Yonkers personal income tax return or nonresident earnings tax return for the year.

Approval to File a Group Return

A partnership 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 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 partnership accordingly. If approval is granted, the partnership will be issued a special New York State 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.) However, the partnership must maintain at least 35 participating partners in order to continue filing on a group basis.

Note: You **must** obtain prior approval to file a group return. If you file a group return without prior approval, the return will be rejected and the participating partners could be subject to late filing or late payment penalties.

The approval to file a group return will not be retroactively revoked after the return has been filed simply because the partnership fails to maintain 35 qualified electing partners. For example, if a partnership filed a group return for 37 qualified electing nonresident partners for tax year 1996, and it is subsequently determined that three of the partners did not qualify to be included on the group return, the approval to file the group return for 1996 will not be revoked. However, approval to continue filing any further group returns for future years will be revoked unless the partnership has 35 or more qualified electing partners for those years.

Reinstatement: If a partnership that has received approval to file a group return 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 address on page 1. The notice must show the name and address of the partnership and the special New York identification number. In addition, if the partnership 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 partnership that requests approval to file a group return must appoint one partner as the "group agent." The group agent must have legal authority to act as an agent in matters relating to the

group return, for all partners participating in the return. 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 to the individual partner involved. In addition, the group agent will be liable for any penalties relating to making and signing an erroneous, false or fraudulent return, but only if the agent was responsible for the error, etc.

If the partnership changes group agents, it must notify the Tax Department immediately at the address shown on page 1. In addition, if the partnership is required to submit powers of attorney as described below, the notice must be accompanied by new powers of attorney for all participating partners.

The following rules apply to the submission of powers of attorney.

If the partnership:

- first applies for permission to file a group return after December 31, 1996,
or
- requests reinstatement of permission to file a group return after December 31, 1996,
or
- requests permission to file a group return before December 31, 1996, and has at least 35 but less than 50 qualified electing nonresident partners at the time permission was requested,

then Form PR-99 must be accompanied by an individual power of attorney for each qualified nonresident partner 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 partner in the filing of the group return. If subsequent to the application date, an additional partner elects to participate in the group return, a power of attorney for that partner must be attached to the first group return on which the partner is included.

If the partnership:

- requested permission to file a group return before December 31, 1996,
and
- had 50 or more qualified electing partners at the time it requested permission to file,

then the partnership is exempt from both of the power of attorney submission requirements . This exemption remains in effect as long as the partnership continues to file a group return each year. However, the group agent must still have legal authority to act as an agent for the participating partners in all matters related to the group return. If a partnership must request

reinstatement of permission to file a group return because it failed to file a group return for the prior year(s), it will become subject to the power of attorney submission requirements at that time.

Qualified Nonresident Partner

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

- the partner must be a nonresident individual (i.e., the partner cannot be another partnership, limited liability company, corporation or an estate or trust) of **New York State** for the entire tax year;
- the partner did not maintain a permanent place of abode in New York State at any time during the tax year;
- the partner or the partner's spouse must have no income derived from New York sources other than the partner's distributive share of partnership income;
- the partner or the partner's spouse cannot be subject to the New York State minimum income tax or the New York State separate tax on the ordinary income portion of a lump-sum distribution; and
- the partner must waive the right to claim the New York standard deduction or itemized deduction, the New York dependent exemption, any New York State credits and any carryback or carryover of a New York State net operating loss or capital loss.

Note: If both a husband and wife are partners in the same partnership, both spouses may be included in the group return if they both meet the qualifications described above and both spouses elect to participate. If only one spouse elects to participate, **neither** may participate in the group return.

Electing to Participate in the Group Return

A qualified nonresident partner elects to participate in the group return by informing the group agent that he or she wishes to participate and, if required, by executing a power of attorney as described previously. 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 partner's inclusion in the group return constitutes notice to the Tax Department that the partner is electing to participate in the group return.

A partner who elects to be included in the group return may not change that election after the fifteenth day of the fourth month after the close of the tax year. However, if it is subsequently determined that a partner included in the group return did not meet the definition of a qualified nonresident partner for the tax year, the partner would be required to file an amended return on an individual basis.

City of New York and City of Yonkers Nonresident Earnings Taxes

If a partnership files a group New York State return **and** the partnership has income derived from New York City or City of Yonkers sources, the partnership must also file a group New York City or Yonkers nonresident earnings tax return. The group City return must include all qualified nonresident partners who participate in the group State return. If a partner does not participate in the group State return, the partner may not participate in the group City return.

However, a partnership may file a group New York City or Yonkers return even if the partnership is not filing a group New York State return. To be eligible to file a separate group city return, the partnership must have 35 or more qualified nonresident partners for city purposes who elect to participate in the city group return.

A qualified nonresident partner for New York City or Yonkers purposes is a partner who meets all of the following conditions:

- the partner must be a nonresident of **New York State** for the entire tax year;
- the partner did not maintain a permanent place of abode in New York State at any time during the tax year; and
- the partner must have no income derived from New York City or Yonkers sources other than the partner's share of the partnership's net earnings from self employment allocated to New York City or Yonkers.

A partnership that elects to file only a city group nonresident return must make application to the Department, appoint a group agent and submit any required power of attorney in the same manner that applies for New York State purposes.

If the separate city election is made, each of the participating nonresident partners will file an individual New York State nonresident income tax return and omit the New York City or Yonkers entries on the return. The partner must attach a statement to the return that the New York City or Yonkers nonresident earnings tax is being reported separately on a group return filed by the partnership. The statement must also contain the special New York identification number assigned to the partnership.

Filing Requirements and Tax Computation

The New York State, New York City or Yonkers group return must be filed on Form IT-203-GR, *Group Return for Nonresident Partners*. For calendar year taxpayers, Form IT-203-GR must be filed no later than April 15th of the following year. (However, see Extensions of Time below.) In addition, a partnership filing a group return must attach to its Form IT-204, *New York State Partnership Return*, a list showing the name (in alphabetical order) and social security number of each partner who will be included on the group return.

Each participating partner's New York State personal income tax is computed by multiplying the partner's distributive share of partnership income allocated to New York State, less certain partnership related deductions allocated to the state, by the highest effective rate of New York State personal income tax for the applicable tax year (e.g., 7.125% for 1996).

Each participating partner's New York City or Yonkers nonresident earnings tax is computed by multiplying the partner's net earnings from self-employment allocated to the city, less any allowable exclusion, by the city's nonresident earnings tax rate applicable to net earnings from self-employment for the tax year (e.g., .65% for New York City and .50% for Yonkers for 1996).

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

Extension of Time

If the partnership cannot meet the deadline for filing Form IT-203-GR, 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 partnership and must be signed by the group agent. The partnership must also attach to Form IT-370 a list showing each participating partner's name (in alphabetical order), address and social security number.

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

Estimated Tax Payments

A partnership that has received approval to file a group nonresident return may also elect to file group estimated tax installments.

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

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

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

If a partner who was included in the group estimated tax notifies the 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 above. In these situations, the individual partner 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.

Amended Return or Federal Change

An amended group return must be filed if an amended federal return is filed by the partnership, or if a federal audit of the partnership changes any of the partnership items of income, gain, loss or deduction reported on the original group return. An amended group return must be filed within 90 days of the date the federal amended 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 by the group agent indicating you concede the federal audit changes. If you do not concede the federal audit changes, attach a signed statement explaining why.