

Important Notice

November 2003

Additional Instructions for the 2003 Form CT-2658-I, *Instructions for Form CT-2658*, and Form IT-2658-I, *Instructions for Form IT-2658*

Recent legislation amended the estimated tax provisions that require partnerships (including limited liability companies (LLCs) or limited liability partnerships (LLPs) that are treated as partnerships for federal income tax purposes) and New York S corporations that have income derived from New York sources to make estimated tax payments on behalf of partners and shareholders who are C corporations or nonresident individuals.

This new legislation exempts publicly traded partnerships, as defined in Internal Revenue Code (IRC) section 7704, from making estimated tax payments on behalf of their partners who are C corporations or nonresident individuals. In addition, partnerships and New York S corporations are not required to make estimated tax payments on behalf of any partner or shareholder who files a certificate of exemption with the partnership or New York S corporation.

Use the original instructions for the 2003 versions of Forms CT-2658, *Report of Estimated Tax for Corporate Partners*, and IT-2658, *Report of Estimated Tax for Nonresident Individual Partners and Shareholders*, along with the information contained in this notice, to determine the amount of the estimated tax payment that a partnership or New York S corporation is required to make for January 15, 2004 (December 15, 2003, for partnerships who have corporate partners and elect to make the January 15 payment on December 15, 2003). Except as described below, the information contained in the original instructions remains in effect.

Publicly traded partnerships

Under the new law, publicly traded partnerships (as defined in IRC section 7704) are automatically exempted from making estimated tax payments on behalf of their C corporation or nonresident individual partners. Accordingly, these partnerships do not need to make a payment on January 15, 2004. However, any payments that a publicly traded partnership made on September 15, 2003, will not be refunded at this time. The partner may claim credit for that payment when the individual partner files his or her personal income tax return or the corporation files its corporation tax return.

Automatic exception from the estimated tax provisions

The Tax Law provides for an automatic exception from the estimated tax provisions for partners or shareholders as follows:

- Estimated tax payments are not required for any partner or shareholder whose estimated tax required to be paid for the year by the partnership or New York S corporation is \$300 or less; or
- Estimated tax payments are not required for any partner or shareholder if the entity is authorized to file a group return, and the partner or shareholder has elected to be included on the group return.

New exemption from the estimated tax provisions

Under the new law, the commissioner has the authority to waive the requirement that a partnership or New York S corporation make the estimated tax payments with respect to C corporations and nonresident individuals who meet certain conditions. Effective with the January 15, 2004, payment (or the December 15, 2003, payment for partnerships who have corporate partners and elect to make the January 15 payment on December 15, 2003), the commissioner has authorized that C corporation partners and individual nonresident partners and shareholders who do not qualify for one of the automatic exceptions may, if they qualify, claim exemption from the estimated tax provisions by filing Form CT-2658-E, *Certificate of Exemption from Partnership Estimated Tax Paid on Behalf of Corporate Partners*, or Form IT-2658-E, *Certificate of Exemption from Partnership or New York S Corporation Estimated Tax Paid on Behalf of Nonresident Individual Partners and Shareholders*, with the partnership or New York S corporation. Once the partnership or New York S corporation receives the signed certificate, the partnership or New York S corporation may rely on that certificate and is not required to make any further estimated tax payments on behalf of that partner or New York S corporation shareholder. The partnership or New York

S corporation is not required to send a copy of the exemption certificate to the Tax Department. However, see *Submission of certain information relating to partners and shareholders who file exemption certificates* later in this notice.

The commissioner has determined that a C corporation qualifies for the exemption and may file Form CT-2658-E if it meets one of the following conditions:

- The corporation is not subject to the taxes imposed under the New York State Tax Law Article 9, 9-A, 32, or 33 (tax-exempt corporations that are only subject to the tax on unrelated businesses under the New York State Tax Law Article 13 qualify under this rule); or
- The corporation certifies that it will comply, in its corporate capacity, with all New York State corporation estimated tax payment provisions and tax return filing requirements.

The commissioner has determined that a nonresident individual qualifies for the exemption and may file Form IT-2658-E if the individual certifies that he or she will comply, in an individual capacity, with all the New York personal income tax estimated tax payment provisions and income tax return filing requirements.

C corporation partners and nonresident partners and shareholders are required to notify the partnership or S corporation within 10 days if they will no longer meet the requirements for claiming exemption. If the partnership or New York S corporation is notified, it must begin making estimated tax payments on behalf of the partner or shareholder.

The current exemption certificates will cover the last payment due for tax year 2003 and the payments due for tax years 2004 and 2005. All certificates will expire on February 1, 2006, regardless of when the partners and shareholders submitted the certificate. All partners and shareholders who continue to qualify for the exemption after that date must file a new certificate to keep the exemption in effect.

Any payments of estimated tax made on or before September 15, 2003, on behalf of a C corporation or nonresident individual who now qualifies for exemption from the estimated tax provisions will not be refunded at this time. The partners or shareholders will claim credit for those payments when they file their New York income tax returns.

Note: The original instructions for Forms CT-2658 and IT-2658 contained an automatic exception from the estimated tax rules for:

- C corporations, if the partnership could demonstrate that the partner's distributive share of partnership income earned from New York sources would not be includable in the partner's New York taxable income; and
- nonresident individuals, if the partnership or New York S corporation could demonstrate that the partner's or shareholder's distributive share of partnership or pro rata share of S corporation income from New York sources would not be includable in the partner's or shareholder's New York source income.

Under the new law, these automatic exceptions no longer apply. However, partners or shareholders in these circumstances may, if they qualify, file Form CT-2658-E or IT-2658-E to claim exemption from the estimated tax requirements.

Submission of certain information relating to partners and shareholders who file exemption certificates

Partnerships and New York S corporations do not have to submit copies of Forms CT-2658-E or IT-2658-E to the Tax Department. The partnership or New York S corporation may rely on those forms to exempt the partner or shareholder from the estimated tax provisions. The partnership or New York S corporation must maintain copies of Forms CT-2658-E and IT-2658-E for its records.

However, in the future, the Tax Department will require partnerships and New York S corporations to periodically submit to the Tax Department certain information relating to partners and shareholders who have filed exemption certificates. Partnerships and New York S corporations will be notified of this submission process in a future mailing.