

**Instructions for Form IT-203-S****Group Return for Nonresident Shareholders of New York S Corporations****New for 2010**

The definition of New York source income of a nonresident shareholder has been amended to include certain S corporation gains from acquisition, liquidation, and installment sales of assets to the extent that the business was conducted in New York State. For additional information, see TSB-M-10(10)I, *Amendments to the Treatment of Certain S Corporation Income by Nonresident Taxpayers*.

General information

A New York S corporation (*S corporation*) that has any income derived from or connected with New York sources may be granted approval to file Form IT-203-S, *Group Return for Nonresident Shareholders of New York S Corporations*. A Form IT-203-S may be filed only if the S corporation has 11 or more qualified nonresident shareholders who elect to file on a group return for each year. All qualified shareholders who elect to participate in the group return must have the same accounting period.

A group return is considered a group of individual returns that meet the New York State tax return filing requirements. Accordingly, if a qualified shareholder elects to participate in the group return, the shareholder is not required to file an individual New York State nonresident personal income tax return for the tax year.

Approval to file a group return

An S corporation that wishes to file a group return on behalf of its qualified electing shareholders must request permission to do so by submitting an application on Form TR-99, *Application for Permission to File a Group Return*. Form TR-99 must be submitted to: **NYS Tax Department, Taxpayer Contact Center, W A Harriman Campus, Albany NY 12227**. You must file Form TR-99 no later than 30 days following the close of the initial tax year for which you are requesting to file a group return. See *Need Help?* for information on how to get forms.

After receipt of a properly completed Form TR-99, the Tax Department will determine whether permission will be granted and will notify the S corporation accordingly. If approval is granted, the S corporation will be issued a special New York State identification number to be used only for filing the group return. The Tax Department's approval to file on a group basis is contingent upon the receipt of the group return for the applicable tax year, 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. In addition, the S corporation must maintain at least 11 participating shareholders 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 shareholders could be subject to late-filing or late-payment penalties, or both.

The approval to file a group return will not be retroactively revoked after the return has been filed simply because the S corporation fails to maintain 11 qualified electing shareholders. For example, if an S corporation filed a group return for 13 qualified electing nonresident shareholders for this tax year, and it is subsequently determined that three of the shareholders did not qualify to be included on the group return, the approval to file the group return for this tax year will not be

revoked. However, approval to continue filing any further group returns for future years will be revoked unless the S corporation has 11 or more qualified electing shareholders for those years.

Reinstatement: If an S corporation that has received approval to file on a group basis decides not to file a group return for a particular tax year, it must notify the Tax Department of its decision in writing at the previously stated address. The notice must show the name and address of the S corporation and the special New York State identification number. In addition, if the S corporation wishes to file a group return for a subsequent year, it must request reinstatement of its approval to file a group return. A request for reinstatement must be submitted on Form TR-99. Form TR-99 must be submitted no later than 30 days following the close of the first tax year for which reinstatement is requested.

Group agent and powers of attorney

An S corporation that requests approval to file a group return must appoint one shareholder 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 shareholders participating in the return. The group agent is required to sign the group return, and any communications from the Tax Department will be sent to the group agent. Any notices required by law, such as a notice of deficiency or a notice and demand, will be sent to the group agent as well as to the individual shareholder involved. The group agent will be personally liable for only those penalties relating to making or signing an erroneous, false, or fraudulent return, but only if the agent was actually responsible for the error.

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

If the S corporation changes group agents, it must notify the Tax Department immediately at the previously stated address. The notice must also be accompanied by new powers of attorney for all participating shareholders (however, see *Note* below).

Note: Other evidence that establishes the group agent's authority to act as an agent in making, executing, and filing the group return for the qualified electing nonresident shareholders, if acceptable to the Tax Department, may be submitted in lieu of individual powers of attorney. If you wish to submit other evidence, attach a statement to Form TR-99 describing the evidence you wish to submit. We will notify you whether or not the evidence is acceptable. The filing of Form DTF-350, *Group Affidavit*, in accordance with the instructions of that form, is acceptable evidence which may be submitted in lieu of individual powers of attorney.

Qualified nonresident shareholder

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

- The shareholder must be a nonresident **individual** of New York State for the entire tax year (a shareholder that is a trust is not a qualified nonresident shareholder).
- The shareholder did not maintain a permanent place of abode in New York State at any time during the tax year.
- Neither the shareholder nor the shareholder's spouse has income derived from New York sources other than (1) the shareholder's prorata share of S corporation income, loss, and deduction, with New York additions and subtractions, allocated to New York or (2) other income derived from certain New York sources described below.
- Neither the shareholder nor the shareholder's spouse is subject to the New York State minimum income tax or the New York State separate tax on the ordinary income portion of a lump sum distribution.
- The shareholder must waive the right to claim the New York standard deduction or itemized deduction, the New York dependent exemption, any New York State personal income tax credits (see *Special rule for credits* below), and any carryback or carryover of a New York State net operating loss (NOL) or capital loss (see *Special rule for New York State NOL or capital loss* below).

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

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

Special rule for New York State NOL or capital loss: Determine a New York State NOL or capital loss for each shareholder who has elected to file on a group return in the same manner as if the shareholder was filing an individual nonresident personal income tax return. Any New York State NOL or capital loss that originates in a year for which the shareholder elects to file on a group return, or originates in a year for which the shareholder files an individual personal income tax return, may not be carried back or carried over to a year for which the shareholder elects to file on a group return. However, the shareholder may claim any NOL or capital loss carryback or carryover amount in any previous or subsequent year in which the shareholder files an individual personal income tax return. In this instance, a shareholder must consider any year or years for which the shareholder filed on a group return, for purposes of determining the allowable carryback or carryover period applicable to an NOL.

Note: If a nonresident shareholder incurs an NOL for New York State income tax purposes but does not incur an NOL for federal income tax purposes, the shareholder may elect for New York State income tax purposes, to waive the carryback period and to carry the NOL forward (on the shareholder's individual personal income tax return) to each of the allowable years following the tax year of the NOL, to the extent not absorbed. A statement must be attached to the nonresident group return indicating that the shareholder is electing to waive the carryback period. The election must be made by the due date of the nonresident group return for the year of the NOL. The election may not be revoked once made. If more than one nonresident shareholder is making the election, the statement attached to the nonresident group return must include the name and social security number of each nonresident shareholder making the election.

Special rules for spouses: If both a husband and wife are shareholders in the same S corporation, both spouses may be included in the group return if they both meet the qualifications described above and both spouses elect to participate. Unless **both** spouses elect to participate, **neither** may participate in the group return.

If a shareholder or a shareholder's spouse receives wages derived from New York sources from the S corporation, neither may participate in the group return.

If a shareholder, or shareholder's spouse, has other New York source income only from a partnership, another S corporation, or professional athletic team that files a group return and (1) the shareholder, or shareholder's spouse, participates in the other group return(s) and (2) the shareholder, or shareholder's spouse, does not participate in more than 10 group returns for the tax year, the shareholder must be included on the S corporation's group return. The shareholder must also notify each group agent that the shareholder is included on another group return.

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

Electing to participate in the group return

A qualified nonresident shareholder elects to participate in the group return by informing the group agent that he or she wishes to participate. The election must be made by the fifteenth day of the fourth month following the close of the tax year for which the election is being made. The shareholder's inclusion in the group return constitutes notice to the Tax Department that the shareholder is electing to participate in the group return.

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

An S corporation filing a group return must attach a list showing the name (in either alphabetical or social security number order), and social security number of each shareholder who will be included on the group return to its New York State S corporation return.

Sales and Use tax

Individual taxpayers may report the amount of New York State and local sales and use taxes that they owe, if any, on their personal income tax return. Sales and use tax **cannot** be

reported on the group return. However, if a qualified nonresident electing shareholder expects to owe sales and use tax (see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*), the shareholder may still be included on the group return, but must also file Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*, on or before April 18, 2011, to report and pay any sales and use tax the shareholder owes.

Estimated income tax payments

An S corporation that has received approval to file a group nonresident return may also elect to file group estimated income tax installments on behalf of its qualified electing nonresident shareholders.

The **group installments** are filed on **Form IT-2105, Estimated Income Tax Payment Voucher for Individuals**. The form must show the name and address of the S corporation and the special New York State identification number assigned to the S corporation. Enter on Form IT-2105 the total estimated income tax paid on behalf of the group. However, the group agent must maintain records to show that portion of the total that is paid on behalf of each participating shareholder.

If the 2010 estimated income tax payments do not equal at least 90% of the 2010 income tax, or 100% of the 2009 income tax (110% of that amount if the nonresident shareholder is not a farmer or fisherman and the New York adjusted gross income on that return is more than \$150,000 or, if married filing separately, more than \$75,000), based upon a return covering 12 months, a penalty for underpayment of estimated income tax may be imposed. However, a penalty will only be charged if at least \$300 of New York State income tax is owed. For more information, see Form IT-2105.9, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries*, and its instructions (Form IT-2105.9-I).

If a qualified nonresident shareholder who was included in the group estimated income tax decides not to participate in the group return, or if the S corporation subsequently decides not to file a group return for the tax year, the group agent should notify the Tax Department no later than February 15 of the year in which the return is due. This notification must contain **all** of the following information:

- the name and address of the S corporation
- the special New York State identification number assigned to the S corporation
- the shareholder's name, address, and social security number
- the amount of estimated income tax paid on the shareholder's behalf
- a request that the payment or payments be transferred to an individual estimated income tax account in the shareholder's name

If more than one shareholder included in the group estimated income tax will not be participating, the above shareholder information should be provided for each shareholder. The **notification** must be mailed to: **NYS Tax Department, Estimated Tax Unit, W A Harriman Campus, Albany NY 12227-0125**.

This transfer of estimated income tax payments could take two to three weeks to become effective. If the shareholder files an individual personal income tax return before the transfer becomes effective, the shareholder will not get credit for these payments when the return is processed, and a tax-due notice will be issued to the shareholder. Therefore, this time period should be taken into account when the shareholder files his or her individual tax return.

If a shareholder who was included in the group estimated income tax notifies the group agent after February 15, 2011, but before April 18, 2011, the group agent should notify the Tax Department immediately, using the procedure described above. In these situations, the individual shareholder may wish to request an extension of time to file to ensure that the estimated income tax payment will be properly credited to the individual's account prior to the individual's return being filed.

Amended return or federal change

To amend a previously filed Form IT-203-S, complete a new Form IT-203-S using the corrected information and mark an **X** in the *Amended return* box. You must also complete a new Form IT-203-S-ATT. An amended group return must be filed if an amended federal return is filed by the S corporation, or if a federal audit of the S corporation changes any of the S corporation 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 S corporation 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 that the S corporation concedes the federal audit changes. If the S corporation does not concede the federal audit changes, attach a signed statement explaining why.

Specific instructions

Form IT-203-S

Name and address box

Enter in the spaces at the top of the return the legal name, trade name (if different from legal name), address, and employer identification number of the S corporation exactly as these items will appear on its New York State S corporation return. In addition, enter the special New York State identification number in the box indicated.

Foreign addresses — Enter the information in the following order: city, abbreviation for the province or state, postal code (follow the country's practice), and country. **Do not abbreviate the country name.**

Note: You must complete **Form IT-203-S-ATT** before you can complete lines 1 through 5 of Form IT-203-S.

Line 4 — If you owe more than one dollar, attach your payment to the front of this return. Make your check or money order payable to **New York State income tax** and write your special New York identification number and **2010 IT-203-S** on it. Do not send cash. See *Where to file* on page 4.

Fee for payments returned by banks — The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department won't charge the fee.

If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

Line 5 — The amount overpaid will be applied to your **2011** estimated income tax. This amount **cannot** be refunded to you.

Signature

This form must be signed by the group agent on behalf of the participating shareholders. If used, a paid preparer must also sign the return and fill in the other information required.

Note to paid preparers — When signing the group return, you must enter your New York tax preparer registration identification number (NYTPRIN) if you are required to have one. Also, you must enter your federal preparer tax identification number (PTIN) if you have one; if not, you must enter your social security number.

When to file

You may file Form IT-203-S at any time after January 1, 2011, but not later than the filing deadline of April 18, 2011. If you file late, you may have to pay penalties and interest.

Extension of time to file

If you cannot meet the filing deadline, the S corporation may request an extension to file the group return using Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*. Form IT-370 must show the special identification number assigned to the S corporation. The S corporation must also attach to Form IT-370 a list showing each participating shareholder's name (in either alphabetical or social security number order), address, and social security number.

Where to file

Mail the group return to:

**NEW YORK STATE INCOME TAX
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Private delivery services — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* below for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery.

Form IT-203-S-ATT

You must complete and attach Form IT-203-S-ATT. Use as many forms as you need to list all qualified nonresident shareholders participating in the group return. Enter the grand totals from all attachment sheets on the last attachment sheet.

Note: You may computer-generate Form IT-203-S-ATT, provided it conforms substantially to the official form. Any computer generated form must be in the same format as Form IT-203-S-ATT and must use a font face and size (#12 or larger) that is easy to read.

Column C — Enter the shareholder's pro rata share of federal items reported on federal Schedule K-1 that represent business income subject to the business allocation percentage under Article 9-A.

Column D — Use the business allocation percentage determined under Article 9-A to determine the amount to be entered in column D.

Column E — Enter the shareholder's pro rata share of federal items reported on federal Schedule K-1 that represent investment income subject to the investment allocation percentage under Article 9-A.

Column F — Use the investment allocation percentage determined under Article 9-A to determine the amount to be entered in column F.

Column H — Enter the amounts shown in boxes 11 and 12 of federal Schedule K-1 that represent deductions not allowed in computing the amount shown in column G. Do not include in this column any deductions that are required to be treated as itemized deductions on the shareholder's federal income tax return.

Column I — The amount in column H is allocated to New York State in the same manner as its related federal item of income, gain, or loss was allocated. If a deduction item included in column H does not relate to a particular federal item, it is allocated to New York State based upon the percentage of total federal S corporation income, gain, or loss that was allocated to New York State.

Column J — Determine the portion of each New York addition and subtraction shown on Form CT-34-SH, lines 1 through 5, that is allocated to New York State. An addition or subtraction is allocated to New York State in the same manner as the federal items of income, gain, or loss to which it relates. Enter the total amount of the additions and subtractions allocated to New York State as a net addition or subtraction.

Column M — Enter each shareholder's estimated income tax paid and/or amount paid with Form IT-370. Be sure to include any overpayment from the 2009 group return that was applied to the shareholder's estimated income tax.

Column P — Mark an **X** in this column if the shareholder is participating in another group return.

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Telephone assistance is available from 8:30 A.M. to 4:30 P.M. (eastern time), Monday through Friday.

Refund status: (518) 457-5149

Personal Income Tax Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082