



# Instructions for Form IT-203-GG

## Group Return for Other Nonresident Group Members

# IT-203-GG-I

### General information

The Tax Department may allow groups and organizations that are not partnerships, New York S corporations, or professional athletic teams to elect to file group returns on behalf of their qualified nonresident members. Currently, the group classification *nonresident members of board of directors* may elect to file group returns.

A company whose nonresident members of its board of directors perform services in New York State may be granted approval to file Form IT-203-GG, *Group Return for Other Nonresident Group Members*, on behalf of the qualified board members (see below) who elect to participate in the group return. At least two qualified board members must participate in order to file a group return. All qualified electing board members must have the same accounting period.

The group return is considered a group of individual returns that meet the New York State and Yonkers tax return filing requirements. Accordingly, if a qualified board member elects to participate in the group return, the board member is not required to file an individual New York State or Yonkers personal income tax return for the year.

### Approval to file a group return

A company that wishes to file a group return on behalf of its qualified electing nonresident board members 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?* on page 4 for information on how to get forms.

After receipt of a properly completed Form TR-99, the Tax Department will determine whether permission to file a group return will be granted and will notify the company accordingly. If approval is granted, the company 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 (for example, 2008), and is subject to revocation upon audit. An approval to file on a group basis will remain in effect unless it is revoked. Annual approval is not required. However, see *Reinstatement* below.

#### **Note: You must obtain prior approval to file a group return.**

If you file a group return without prior approval, the return will be rejected and the participating board members could be subject to late filing or late payment penalties or both.

**Reinstatement:** If a company 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 company and the special New York State identification number. In addition, if the company 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

A company that requests approval to file a group return on behalf of its qualified electing nonresident board members must appoint a common agent as the *group agent*. The group agent must be an individual. The group agent does not have to be directly associated with the board of directors (that is, a member of the board). However, the company and all qualified electing board members must have the same group agent. 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 the individual board member involved. The group agent will be personally liable only for those penalties relating to making and signing an erroneous, false, or fraudulent return, but only if the agent was actually responsible for the error.

Form TR-99 must be accompanied by an individual power of attorney (however, see *Note* below) for each qualified nonresident board member who the group agent knows, at the time of application, will be participating in the group return. The power of attorney must authorize the group agent to represent the participating board member in the filing of the group return. If, after the application date, an additional board member elects to participate in the group return (or a subsequent year group return), a power of attorney for that board member must be attached to the first group return on which the board member is included. If a company requests reinstatement of approval to file a group return (see *Reinstatement* above), the company must also resubmit powers of attorney as previously described.

If the company 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 board members (however, see *Note* below).

**Note:** Other evidence that establishes the group agent's authority to act as an agent in making, executing, and filing a group return for the qualified electing nonresident board members, if acceptable to the Tax Department, may be submitted instead 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 that may be submitted instead of individual powers of attorney.

### Qualified board member

A *qualified board member* is a board member who meets **all** of the following conditions:

- The board member must be a nonresident **individual** of New York State for the entire tax year.
- The board member did not maintain a permanent place of abode in New York State at any time during the year.
- Neither the board member nor the board member's spouse has income derived from New York sources other than (1) director's fees received for services performed as a member of a board of directors or (2) other income derived from certain New York sources described on page 2.

(continued)

- Neither the board member nor the board member'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 board member must waive the right to claim the New York standard deduction or itemized deduction, the New York dependent exemption, and any New York State personal income tax credits (see *Special rule for credits* below).

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

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

If both a husband and wife are members on the same board of directors, 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 board member, or board member's spouse, has other New York source income only from another board of directors, partnership, New York S corporation, or professional athletic team that files a group return and (1) the board member, or board member's spouse, participates in the other group return(s); and (2) the board member, or board member's spouse, does not participate in more than 10 group returns for the tax year, the board member must be included on the board of directors' group return. The board member must also waive the right to claim the allowable exclusion for purposes of the Yonkers nonresident earnings tax if the board member has Yonkers income from more than one source. The board member must also notify each group agent that the board member is included on another group return.

**Note:** In the case of a board member and a board member's spouse who are both participating in group returns, the 10-group return limitation and the waiving of the allowable exclusion for purposes of the Yonkers nonresident earnings tax is determined individually.

**Example:** *A husband participates in a group return as a member of the board of directors of Corporations A and B and has Yonkers income as a member of the board of directors of both corporations. The member's wife participates in a group return as a member of the board of directors of Corporation C and has Yonkers income as a member of Corporation C's board of directors. The husband is participating in two group returns for purposes of the 10-group return limitation, and must also waive the allowable exclusion for purposes of the Yonkers nonresident earnings tax on the board of directors' group returns of both*

*Corporations A and B because he has Yonkers income from more than one source. The wife is participating in one group return for purposes of the 10-group return limitation and may claim the allowable exclusion for purposes of the Yonkers nonresident earnings tax since she has Yonkers income from only one source.*

## Electing to participate in the group return

A qualified nonresident board member 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 15th day of the fourth month following the close of the tax year for which the election is being made. The board member's inclusion in the group return constitutes notice to the Tax Department that the board member is electing to participate in the group return.

A board member who elects to be included in the group return may not change that election after the 15th day of the fourth month after the close of the tax year. However, if it is later determined that a board member included in the group return did not meet the definition of a qualified nonresident board member for the tax year, the board member would be required to file an amended return on an individual basis.

## Yonkers nonresident earnings taxes

If the company files a group New York State return and the board of directors performs services within Yonkers, the company **must** also file a group Yonkers nonresident earnings tax return. The group Yonkers return must include all qualified nonresident board members who participate in the group state return. If a board member does not participate in the group state return, the board member may not participate in the group Yonkers 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 board member expects to owe sales and use tax (see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*), the board member 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 15, 2009, to report and pay any sales and use tax the member owes.

## Estimated income tax payments

A company 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 board members.

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 company and the special New York identification number assigned to the company. Enter on Form IT-2105 the total state and Yonkers 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 board member.

If the 2008 estimated income tax payments do not equal at least 90% of the 2008 income tax, or 100% of the 2007 income tax (110% of that amount if the nonresident board member 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 or Yonkers income tax is owed. For more information, see Form IT-2105.9, *Underpayment of Estimated Income Tax by Individuals and Fiduciaries*, and the instructions for that form (Form IT-2105.9-I).

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

- the name and address of the company
- the special New York State identification number assigned to the company
- the board member's name, address, and social security number
- the amount of state, and, if applicable, Yonkers estimated income tax paid on the board member's behalf
- a request that the payment or payments be transferred to an individual estimated income tax account in the board member's name

If more than one board member included on the group estimated tax will not be participating, the above board member information should be provided for each board member. The **notification** must be mailed to: **New York State 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 board member files an individual personal income tax return before the transfer becomes effective, the board member will not get credit for these payments when the return is processed, and a tax-due notice will be issued to the board member. Therefore, this time period should be taken into account when the board member files his or her individual tax return.

If a board member who was included in the group estimated income tax notifies the group agent after February 15, 2009, but before April 15, 2009, the group agent should notify the Tax Department immediately, using the procedure described previously. In this situation, the individual member 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.

## Specific instructions

### Form IT-203-GG

#### 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 company filing the group return on behalf of its nonresident board members. In addition, enter the special New York State identification number in the box indicated.

**Note:** You must complete **Form IT-203-GG-ATT-A**, and if applicable, **Form IT-203-GG-ATT-B**, before you can complete lines 1 through 10 of Form IT-203-GG.

**Line 9** — If you owe more than one dollar, attach your payment to the front of the return. Make your check or money order payable to **New York State Income Tax**, and write your special New York identification number and **2008 IT-203-GG** on it. Do not send cash. See *Where to file* below.

**Line 10** — The amount overpaid will automatically be applied to your **2009** 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 board members. If you use a paid preparer, he or she must also sign the return and fill in the other information requested.

**Note to paid preparers** — When preparing the group return, you must enter your federal preparer tax identification number (PTIN), if you have one. If you do not have a PTIN, use your social security number.

#### When to file

You may file Form IT-203-GG at any time after January 1, 2009, but not later than the filing deadline of April 15, 2009. 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 company may request an extension of time 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 New York State identification number assigned to the company. The company must also attach to Form IT-370 a list showing each participating board member's name (in either alphabetical or social security number order), address, and social security number.

#### Where to file

The group return must be filed with:

**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 return and tax payment. However, if, at a later date, you need to establish the date you filed your return 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?* on page 4 of these instructions 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 return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery.

### Forms IT-203-GG-ATT-A and IT-203-GG-ATT-B

#### Schedules A and B

If you are filing a group New York State return, you must complete Schedule A. You must also complete Schedule B if you are required to file a Yonkers group return. Attach the applicable schedules to Form IT-203-GG.

Use as many schedules as you need to list all qualified nonresident board members participating in the group return. Enter the grand totals from all attachment sheets on the last attachment sheet of each set of schedules.

**Note:** You may computer generate Schedules A and B provided they conform substantially to the official schedules. Any computer generated schedules must be in the same format as Schedules A and B and must use a font face and size (#12 or larger) that is easy to read.

**Schedule A**

**Column C** — Enter the total number of board meetings of the company filing this return, held both within and outside New York State during the tax year, that each board member attended.

**Column D** — Enter the number of board meetings of the company filing this return held within New York State during the tax year that each board member attended.

**Column F** — Enter the amount from federal Schedule C, line 31.

**Column I** — Enter each board member's New York State estimated income tax paid and/or amount paid with Form IT-370. Be sure to include any overpayment from the 2007 group return that was applied to the board member's estimated income tax.

**Column L** — Mark an **X** in this column if the board member is participating in another group return.

**Schedule B**

**Column C** — Enter the total number of board meetings of the company filing this return, held both within and outside Yonkers during the tax year, that each board member attended.

**Column D** — Enter the number of board meetings of the company filing this return held within Yonkers during the tax year that each board member attended.

**Column F** — Enter each board member's net earnings from self-employment reported on federal Form 1040, Schedule SE, *Self-Employment Tax*, Section A, line 4, or Section B, line 4c.

**Column H** — If the board member has Yonkers income from only one source, use the *Exclusion table* below to determine the amount to be entered in column H.

**Exclusion table**

If the amount in column G is:		Exclusion
Over	But not over	
\$ 0	\$10,000	\$3,000
10,000	20,000	2,000
20,000	30,000	1,000
30,000		None

**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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

**Need help?**



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.



**Fax-on-demand forms:** Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.  
Refund status: 1 800 443-3200  
(Automated service for refund status is available 24 hours a day, 7 days a week.)  
To order forms and publications: 1 800 462-8100  
**Personal Income Tax** Information Center: 1 800 225-5829  
From areas outside the U.S. and outside Canada: (518) 485-6800



**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, 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 1 800 225-5829.