



Instructions for Form IT-203-S

Group Return for Nonresident Shareholders of New York S Corporations

General information

Who may file Form IT-203-S

You may file Form IT-203-S, *Group Return for Nonresident Shareholders of New York S Corporations*, if the New York S Corporation (*S corporation*):

- has any income derived from or connected with *New York sources*,
- has 11 or more qualified nonresident shareholders who:
 - elect to file on a *group return* for each year, **and**
 - have the same accounting period, and
- requests and is granted approval to file a group return.

New York source income of a nonresident shareholder includes certain S corporation gains from acquisition, liquidation, and installment sales of assets to the extent that the business was conducted in New York State. To learn about *New York source income* of nonresident shareholders, see TSB-M-10(10)I, *Amendments to the Treatment of Certain S Corporation Income by Nonresident Taxpayers*.

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 (Form IT-203, *Nonresident and Part-Year Resident Return*) for the tax year.

Approval to file a group return

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.

To request approval to file a group return on behalf of an S corporation's qualified electing shareholders, the S Corporation must:

1. Complete Form TR-99, *Application for Permission to File a Group Return*.
2. Submit Form TR-99 to: **NYS Tax Department, Individual Account Resolution, W A Harriman Campus, Albany NY 12227-0822**. If not using U.S. Mail, see *Private delivery services*.
3. Submit 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.

For information on how to get forms, see *Need help?*

When the Tax Department receives your properly completed Form TR-99, we will determine whether permission will be granted and will notify the S corporation accordingly. If approval is granted, the Tax Department will issue the S corporation a special NYS 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. Otherwise, approval to file on a group basis will remain in effect unless it is revoked by the Tax Department or the S corporation notifies the Tax Department that they **decided not to file a group return**. Annual approval is **not** required, however, see *Reinstatement* below.

Maintaining qualified electing shareholders

To continue to file as a group, the S corporation must maintain at least 11 participating shareholders.

However, 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.

Example: If an S corporation files a group return for 13 qualified electing nonresident shareholders for this tax year, and it is subsequently determined that three of the shareholders were not qualified, the Tax Department will **not** revoke the approval to file the group return for this tax year. However, the department **will** revoke approval to continue filing any further group returns for future years unless the S corporation has 11 or more qualified electing shareholders for those years.

Deciding not to file a group return

If an S corporation that 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 **NYS Tax Department, Individual Account Resolution, W A Harriman Campus, Albany NY 12227-0822**. The notice must show the name and address of the S corporation and the special NYS identification number. If the S corporation decides to file a group return for a subsequent year, see *Reinstatement* below.

Reinstatement

If the group previously received approval to file a group return, but subsequently did not file a group return for one or more years and now wishes to resume filing a group return, it must request reinstatement of its approval as follows:

1. Complete Form TR-99, *Application for Permission to File a Group Return*, and mark an **X** in the *application for reinstatement* box. Also enter the special NYS identification number previously issued to the group (if known).
2. Obtain new powers of attorney for all electing shareholders.
3. Submit Form TR-99 with the powers of attorney to: **NYS Tax Department, Individual Account Resolution, W A Harriman Campus, Albany NY 12227-0822**. If not using U.S. Mail, see *Private delivery services*
4. Submit 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.

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*.

Requirements

The S corporation and all qualified electing shareholders must have the same 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,
- sign the group return, and
- receive any communications from the Tax Department. 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.

Personal liability

If the group agent was actually responsible for making or signing an erroneous, false, or fraudulent return, the agent will be personally liable for penalties relating to those errors.

Responsibilities

The group agent must:

1. Obtain an individual power of attorney (see *Note* below) for each qualified nonresident shareholder who has advised the group agent they intend to participate 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.
2. Complete and submit Form TR-99 with the individual powers of attorney. See *Approval to file a group return*, above.
3. Attach additional powers of attorney to the group return as needed for any shareholders who elected to participate in a group return **after** the group agent submitted Form TR-99.
4. Notify the Tax Department immediately at **NYS Tax Department, Individual Account Resolution, W A Harriman Campus, Albany NY 12227-0822**, if the S corporation changes its group agent. The new group agent must obtain and include new powers of attorney for all participating shareholders (see *Note* below).

Note: Instead of individual powers of attorney, **you may submit** 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. Submit a statement with Form TR-99 describing the evidence you want to submit. We will notify you whether or not the evidence is acceptable.

For example, you may file and submit Form DTF-350, *Group Affidavit*, as acceptable evidence instead of submitting 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 pro rata 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 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 net operating loss or capital loss* below).

Special rule for credits

In years when a shareholder elects to file on a group return, the shareholder must waive the right to claim:

- any New York State personal income tax credits that originate in those years;
- any carryover to subsequent tax years of credits that originated in those years, whether the shareholder subsequently files on a group return or files an individual personal income tax return; and
- any carryover of credits 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. This applies 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 they 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 net operating loss or capital loss

Determine a New York State net operating loss 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.

Whether a New York State net operating loss or capital loss 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, the shareholder may **not** carry the net operating or capital loss back or over to a year for which the shareholder elects to file on a group return.

However, the shareholder may claim any net operating loss or capital loss carryback or carryover amount in any previous or subsequent year for which the shareholder files an individual personal income tax return. In this instance, to determine the allowable carryback or carryover period applicable to a net operating loss, a shareholder must consider any year or years for which the shareholder filed on a group return.

Note: If a nonresident shareholder incurs a net operating loss for New York State income tax purposes but does **not** incur one 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 net operating loss forward (on the shareholder's individual personal income tax return) to each of the allowable years following the tax year of the net operating loss, to the extent not absorbed.

The shareholder must make the election by the due date of the nonresident group return for the year of the net operating loss. The election may **not** be revoked once made.

As the group agent, you must:

1. Submit a statement with the nonresident group return indicating that the shareholder is electing to waive the carryback period.
2. Include the name and Social Security number of each nonresident shareholder making the election when you submit the nonresident group return.

Special rules for spouses

You may include **both spouses** in the group return if:

- both spouses are shareholders in the same S corporation,
- both meet the qualifications described above (see *Qualified nonresident shareholder*), and

- both spouses elect to participate.

You may **not** include **either spouse** in the group return, if:

- one spouse declines to participate, or
- a shareholder or a shareholder's spouse receives wages derived from New York sources from the S corporation.

You **must** include a shareholder, or shareholder's spouse in the group return if **either spouse** has other New York source income only from one or more partnerships, other S corporations, or professional athletic teams filing a group return and:

- the shareholder, or shareholder's spouse, participates in other group returns; and
- the shareholder, or shareholder's spouse, does not participate in more than 10 group returns for the tax year.

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). The shareholder must also notify each group agent that the shareholder is included on another group return.

Electing to participate in the group return

When you include a shareholder in the group return, you are notifying Tax Department that the shareholder is electing to participate in the group return.

To elect to participate in the group return, the qualified nonresident shareholder must inform the group agent that they want to participate. The shareholder must make the election by the fifteenth day of the fourth month following the close of the tax year for which the election is being made.

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 will be required to file an amended return on an individual basis.

An S corporation filing a group return must submit a list (in either alphabetical or Social Security number order) with its New York State S corporation return showing the name and Social Security number of each shareholder who will be included on the group return.

Sales and use tax

Shareholders who elect to participate in the group return **cannot** report any local sales and use taxes they expect to owe on the group return. They 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, 2024, to report and pay any sales and use tax the shareholder owes.

For more information, see the instructions for Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

Estimated income tax payments

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

Use Form IT-2105, *Estimated Tax Payment Voucher for Individuals*, to make the estimated tax payments for the group. Enter the following on Form IT-2105:

- name and address of the S corporation,
- the special NYS identification number assigned to the S corporation (the group ID), and
- the total estimated income tax paid on behalf of the group.

The group agent must maintain records to show that portion of the total that is paid on behalf of each participating shareholder.

Penalty for underpayment of estimated tax

The Tax Department may impose a penalty if the 2023 estimated income tax payments do not equal at least:

- 90% of the 2023 income tax; or
- 100% of the 2022 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 [\$75,000 if married filing separately for 2023]), based on a return covering 12 months.

However, the department will only charge a penalty if at least \$300 of New York State income tax is owed. For more information, see Form IT-2105.9, *Underpayment of Estimated Tax by Individuals and Fiduciaries*, and its instructions.

Shareholders who change their election

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 the following information:

- the name and address of the S corporation;
- the special NYS 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; **and**
- 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 group agent must provide all the above shareholder information for each shareholder.

Mail the **notification** to: **NYS Tax Department, Estimated Tax Unit, W A Harriman Campus, Albany NY 12227-0822**. If not using U.S. Mail, see *Private delivery services*.

Important information for shareholders who change their election

When a shareholder decides **not** to participate in the group return, they should take the following information into account **before** filing an individual return:

- The transfer of estimated income tax payments to the shareholder's individual estimated income tax account could take **two to three weeks** to become effective.
- The shareholder should check their annual tax account online in their Individual Online Services account **before filing** to ensure the estimated payments were successfully transferred. See *Review your tax account balance before you file* or visit www.tax.ny.gov (search: *estimated*).
- 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 filing the shareholder's individual tax return.
- If a shareholder who was included in the group estimated income tax notifies the group agent **after** February 15, 2024, but **before** April 15, 2024:
 - the individual shareholder may want 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, and
 - the group agent should notify the Tax Department immediately, using the procedure described above.

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.

File an amended return if:

- the S corporation files an amended federal return, or
- 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.

You must file an amended group return 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. You must also submit:

- 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; or
- if the S corporation does **not** concede the federal audit changes, a signed statement explaining why.

Specific instructions

Entering whole dollar amounts

When entering amounts on this return, enter whole dollar amounts only (zeros have been preprinted). Use the following rounding rules when entering your amounts:

- Drop amounts below 50 cents.
- Increase amounts from 50 to 99 cents to the next dollar.

For example, \$1.39 becomes \$1 and \$2.50 becomes \$3.

Form IT-203-S

Name and address box

At the top of the return, enter the following exactly as they appear on the S corporation's New York State S corporation return:

- legal name
- trade name (if different from legal name)
- address
- employer identification number of the S corporation
- the special NYS identification number (also called the Group ID)

If you are entering a foreign address, 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.**

Lines 1 through 5

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, submit your payment with this return. Make your check or money order payable in U.S. funds to **New York State income tax** and write your special NYS identification number and **2023 IT-203-S** on it. Do **not** send cash. See *Where to file*.

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 will not 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 automatically be applied to your 2024 estimated tax. This amount cannot be refunded.

Signature

The group agent must sign this form on behalf of the participating shareholders. See *Personal liability* above.

Paid preparer's signature

If you pay someone to prepare your return, the paid preparer must also sign it and fill in the other blanks in the paid preparer's area of your return. A person who prepares your return and does not charge you should not fill in the paid preparer's area.

Paid preparer's responsibilities

Under the law, all paid preparers must sign and complete the paid preparer section of the return. Paid preparers may be subject to civil and/or criminal sanctions if they fail to complete this section in full.

When completing this section, enter your New York tax preparer registration identification number (NYTPRIN) if you are required to have one. If you are not required to have a NYTPRIN, enter in the *NYTPRIN excl. code* box one of the specified 2-digit codes listed below that indicates why you are exempt from the registration requirement. You **must** enter a NYTPRIN **or** an exclusion code. Also, you must enter your federal preparer tax identification number (PTIN) if you have one; if not, you must enter your Social Security number.

Exemption types by code

Code	Exemption type	Code	Exemption type
01	Attorney	02	Employee of attorney
03	CPA	04	Employee of CPA
05	PA (Public Accountant)	06	Employee of PA
07	Enrolled agent	08	Employee of enrolled agent
09	Volunteer tax preparer	10	Employee of business preparing that business' return

For more information about tax preparer registration requirements, see [Tax preparer and facilitator registration and continuing education](#) or visit www.tax.ny.gov (search: *preparer*).

When to file

You may file Form IT-203-S any time after January 1, 2024, but no later than the filing deadline of April 15, 2024. 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*. You can file Form IT-370 online using your Online Services account or by mail, using Form IT-370. For details, see [Apply for an extension of time to file an income tax return](#) or visit www.tax.ny.gov (search: *extension*).

When you request an extension, you must:

1. Provide the special NYS identification number assigned to the S corporation on your extension application.
2. Submit with Form IT-370 a list (in either alphabetical or Social Security number order) showing each participating shareholder's name, address, and Social Security number.

Where to file

Mail the group return to:

**NEW YORK STATE INCOME TAX
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

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?](#) 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

Complete and submit Form IT-203-S-ATT with Form IT-203-S as follows:

1. Type directly into Form IT-203-S-ATT to enter information. If you create your own Form IT-203-S-ATT, it **must**:
 - a. be in the same format as the official Form IT-203-S-ATT, and
 - b. use a font face and size (#12 or larger) that is easy to read.
2. Use as many forms as you need to list all qualified nonresident shareholders participating in the group return.
3. Enter the grand totals from all Forms IT-203-S-ATT on the last sheet.

Column C: Enter the shareholder's pro rata share of federal items reported on federal Schedule K-1, lines 1-10.

Column D: Use the business apportionment factor determined under Article 9-A (by the S corporation) to determine the amount to enter in column D.

Column E: Enter the amounts shown in boxes 11 and 12 of federal Schedule K-1 that represent deductions not allowed in calculating the amount shown in column D. 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 F: Allocate the amount in column E to New York State in the same manner as you allocated its related federal item of income, gain, or loss. If you included a deduction item in column E that does **not** relate to a particular federal item, allocate it 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 G: 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. Allocate additions and subtractions to New York State in the same manner as the related federal items of income, gain, or loss. Enter the total amount of the additions and subtractions allocated to New York State as a net addition or subtraction.

Column J: Enter each shareholder's estimated income tax paid or any amount paid with Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or both. Be sure to include any overpayment from the 2022 group return that was applied to the shareholder's estimated income tax.

Column M: If the shareholder is participating in another group return, mark an **X** in this column.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

Visit our website at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Automated income tax refund status: 518-457-5149

Personal Income Tax Information Center: 518-457-5181

To order forms and publications: 518-457-5431

Text telephone (TTY) or TDD equipment users: Dial 7-1-1 for the New York Relay Service