

## Publication 130-D

(10/13)



# The New York State Tax Audit — Your Rights and Responsibilities

The Department of Taxation and Finance's purpose in conducting an audit is to verify that you paid the correct tax. During the audit, you may be required to provide the technician with whatever records are necessary to verify the information you provided on your return. Depending on the type of return being audited, this may entail a review of your income, receipts, expenses, credits, and other business records.

## Professional audit standards

The examination must be conducted in accordance with professional auditing standards by a technician who is familiar with generally accepted accounting procedures and auditing techniques.

To avoid any conflicts of interest, the technician cannot have any personal relationships with the taxpayer, the taxpayer's family, or the taxpayer's employees (in the case of a business audit). Additionally, the technician may not have any personal or financial interest in a business being audited.

Throughout the course of an audit, you are entitled to receive fair, courteous, and professional treatment. If at any time during the course of an audit you feel these standards or any other of your rights are being violated, you should immediately contact the technician's supervisor.

To report allegations of fraudulent employee misconduct, contact the Office of Internal Affairs via telephone at (518) 451-1566 or by mail to:

NYS TAX DEPARTMENT  
OFFICE OF INTERNAL AFFAIRS  
W A HARRIMAN CAMPUS  
ALBANY NY 12227

## Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on tax audits, beyond which the Tax Department may not audit without your written consent. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report federal changes, or filed a false or fraudulent return to evade tax.

## Privacy/confidentiality

You have the right to know why we are requesting certain information, how we will use such information, and the consequences of your failure to submit the information. The Tax Law prohibits the disclosure of information obtained from a tax return, or during the course of an audit, to any unauthorized person. The Tax Law, however, does permit us to share your tax information with the Internal Revenue Service and other tax agencies, under defined standards of secrecy and reciprocity.

## Representation

You may retain representation at any time during the audit, and have the right to suspend a meeting or interview at any time in order to retain such representation. Any person representing you must have the proper written authorization (power of attorney) to act on your behalf in your absence. Former employees of the Department of Taxation and Finance are restricted from representing taxpayers before the department for a period of two years after they leave the department. (Subject to some restrictions, former employees may represent taxpayers before the independent Division of Tax Appeals during this

two-year period.) Former employees are permanently prohibited from representing taxpayers in matters in which they were directly involved during the period of their employment.

## Audio recording

Upon reasonable advance notice to the Tax Department, you are permitted to make an audio recording of any in-person interview. You must make the recording at your own expense and with your own equipment. The Tax Department also reserves the right to record any in-person interview which the taxpayer has requested permission to record.

## The desk audit

The desk audit is usually a review of tax returns, refund requests, or other documents that you have submitted. However, it may pertain to unfiled reports, or be in response to information received from outside the Tax Department, such as the Internal Revenue Service.

If additional information is needed, we will send a letter advising you of the desk audit and listing the specific information required. You then have a reasonable period of time to submit the information requested.

## Audit findings

If there are any additional taxes due, you will receive a *Statement of Proposed Audit Changes* or a similar document, explaining the reason for the additional taxes. You then have a reasonable period of time to respond to the audit findings. However, if the audit results in a refund, you will automatically receive your refund check and a letter explaining any adjustments.

If preliminary audit findings result in a material effect on the reporting of another tax, the findings may be referred to another tax specialty at any time during the audit process. Audit adjustments of one tax specialty may be used as a basis for recalculation of tax in another, depending on the facts and circumstances of the case.

## If you agree . . .

If you agree with the audit findings, you will be asked to acknowledge your consent by signing the *Statement of Proposed Audit Changes* (or similar document). If you owe money but cannot pay in full at that time, you can make a down payment and usually work out an installment payment agreement for the rest. You should be aware, though, that interest (and possibly penalties) will continue to accrue on the unpaid balance.

## If you disagree . . .

If you do not agree with the audit findings, you should indicate your disagreement on the *Statement of Proposed Audit Changes* (or similar document) and return the form to the address shown on the document. The technician will review any additional information submitted and, if appropriate, send you a revised document.

If you still do not agree with the audit findings, we will send you a *Notice of Determination* or *Notice of Deficiency* for the taxes due. At this point, you may formally appeal the audit findings through either the Tax Department's Bureau of Conciliation and Mediation Services or through the independent Division of Tax Appeals. Estate tax cases must be appealed through either the Tax Department's Bureau of Conciliation and Mediation Services or through the county surrogate's court. Generally, you must file your appeal within 90 days of the date the notice was issued. **To determine your time limit, refer to the Notice you received.** You must submit a written appeal even if you have previously written to the Tax Department and objected to the position taken in the *Statement of Proposed Audit Changes* or similar document.

## Penalties and interest

The three most common reasons for tax penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. You can avoid penalties and interest by filing your tax returns and paying the correct amount of taxes on time.

Penalties for late filing and delinquent taxes are generally based on the amount of tax that is overdue. However, there are various penalties for late filing whether or not you owe any taxes.

Whether you agree or disagree with the tax, interest, or penalties, both interest and penalties continue to be added to the amount due until we receive payment.

## Claims for refund

Most taxpayers normally associate refunds of tax with an overpayment of withholding or estimated tax. However, after filing an original return, a taxpayer may discover the omission of a credit, deduction, or exemption. Generally, you may claim refunds by filing an amended return within the statutory time limits for claiming a refund. Please refer to the *Need help?* section to contact the department for the appropriate forms and time limits and any further instructions specific to the tax type for which you are making the claim for refund.

If the amount of your refund is adjusted or denied in full, we will send you an explanation of the changes or a letter of disallowance. If you disagree with the adjustment or disallowance of your refund, you should submit to us a complete explanation of why you disagree, along with any supporting documentation. If you still disagree after our review, you may protest at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals. (See *Your right to protest an action taken by the Tax Department* below.) However, note that if you have received a document specifying the time period in which to protest our determination at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, further correspondence or contact with us will not extend that time period.

## Your right to protest an action taken by the Tax Department

If you disagree with an action taken by the Tax Department (the issuance of a tax deficiency/determination, the denial of a refund claim, or the denial or revocation of a license, registration, or exemption certificate), you may protest by filing a *Request for Conciliation Conference* or by filing a *Petition* for a tax appeals hearing. If the disputed amount is within certain monetary limits, you may elect to have your hearing held in the Small Claims Unit.

**Note:** Estate tax filers are not eligible for hearings before the Division of Tax Appeals.

For estate tax, if you elect not to file a *Request for Conciliation Conference*, you must file a *Notice of Petition* and a *Verified Petition* with the surrogate's court of the county with jurisdiction over the estate if you wish to pursue a court action. To obtain an estate tax petition form, contact the clerk of the local surrogate's court having jurisdiction over the estate.

A copy of the *Notice of Petition* and a *Verified Petition* must be filed simultaneously with the Commissioner of Taxation and Finance. Mail to: Commissioner of Taxation and Finance, Office of Counsel, Office of Bankruptcy, Estates and Collection, Building 9 Room 100, W A Harriman Campus, Albany NY 12227-0125.

You **must** file the request or petition within a certain period from the date the Tax Department mailed you notice of its action. **Please refer to the notice you received to determine your time limit.** These time limits are established by the Tax Law and cannot be extended. We recommend you use certified or registered mail.

You may appear on your own behalf or you may have an authorized representative present your case for review. An authorized representative must have a power of attorney from you.

There are no formal prepayment hearing rights where tax, interest, or penalty is owed because of (1) mathematical or clerical errors on a return, (2) changes made to the taxpayer's federal return by the IRS or other competent federal authority (federal changes), or (3) failure of the taxpayer to pay all or part of the amount of tax due that is shown as due on the taxpayer's return.

## Conciliation conference

A conciliation conference is a rapid and inexpensive way to resolve protests without a formal hearing. The conference is conducted informally by a conciliation conferee, who will review all of the evidence

presented to determine a fair result. After the conference, the conferee will issue a conciliation order. The conciliation order is binding **unless** you file a petition with the Division of Tax Appeals. Refer to the information you receive with the order to determine your time limit to file.

Conferences are not available to distributors, importing transporters, terminal operators, or petroleum businesses, where the issue is an increase in the amount of a bond or other security. These situations may be handled by the Division of Tax Appeals only.

## Tax appeals hearing

The tax appeals hearing procedure begins when you file a petition with the Division of Tax Appeals. You must indicate in writing the specific actions of the Tax Department you are protesting.

The hearing is an adversary proceeding before an impartial administrative law judge. The hearing will be stenographically reported. After the hearing, the administrative law judge will issue a determination which will finally decide the matter(s) in dispute **unless** you or the Tax Department request a review of the determination by the Tax Appeals Tribunal. If such a review is requested, the record of the hearing and any additional oral or written arguments will be considered. After this review, the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or referring the matter back to the administrative law judge for further hearing.

**Court review:** If you do not agree with the Tax Appeals Tribunal's decision, you may seek court review. You must file an application for court review within the specified time limits. For some taxes, you must pay the tax, interest, and penalty, or post a bond for this amount, plus court costs, when you file an application for court review.

**Small claims option:** You may elect to have your hearing held in the Small Claims Unit if the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure of the Tax Appeals Tribunal* (a copy is included with the petition forms). The hearing is conducted as informally as possible by an impartial presiding officer. The presiding officer's determination is conclusive and is not subject to review by any other unit in the Division of Tax Appeals, the Tax Appeals Tribunal, or by any court in the state.

You may request petition forms and the *Rules of Practice and Procedure of the Tax Appeals Tribunal* by writing to: Division of Tax Appeals, Agency Building 1, Empire State Plaza, Albany NY 12223.

A request for petition forms and the rules is **not** considered the filing of a petition for hearing for purposes of the time limits, and does not extend the time limits for filing a petition.

## Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

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



### Telephone assistance

**Business Tax** Information Center: (518) 457-5342

**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



**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, call the information center.