

The New Jersey State Tax Audit —

Your Rights and Responsibilities

The New Jersey Division of Taxation's purpose in conducting an audit is to verify that the correct tax was paid. Because certain taxes administered by the Division are self-assessed, an audit program is essential in providing uniformity. During the audit, the taxpayer may be required to provide the auditor with certain records necessary to verify the information on the return. Depending on the type of return being audited, this may entail a review of income, receipts, expenses, credits, and other business records.

Professional Audit Standards

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

To avoid any conflicts of interest, the auditor 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 auditor may not have any personal or financial interest in a business being audited.

Relationship of Taxpayer and Auditor — Throughout the course of the audit the taxpayer is expected to receive fair, courteous, and professional treatment. There is no occasion for the auditor to harass or to impress the taxpayer with the thought that the object of the audit is to find something wrong with the filed returns. The auditor's functions are to determine whether the amount of tax has been properly reported and to aid the taxpayer in gaining a correct understanding of the law. Care should also be taken to inform the taxpayer regarding his rights and privileges in connection with such determinations. The auditor should be mindful that it is the Division's goal to administer the laws fairly and uniformly with minimal interference to taxpayers and their business affairs.

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 auditor's supervisor.

Statute of Limitations — New Jersey State Tax Law generally places a four-year statute of limitations on tax audits, beyond which the Division 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. Because variations do exist, the specific provisions of each tax law should be consulted.

Privacy/Confidentiality — You have the right to know why certain information is being requested, how such information will be used, and the consequences of failing 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 the Division to share tax information with the Internal Revenue Service and other tax agencies pursuant to defined standards of secrecy and reciprocity.

Representation — Taxpayers 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. Representatives must have the proper written authorization (appointment of taxpayer representative) to act on your behalf in your absence.

The Field Audit

Field audits are scheduled in advance to allow enough time to assemble the required records. If you are selected for a field audit, the initial contact will be made by letter and subsequently followed by a telephone call to set up the initial appointment. You will then receive a letter confirming the appointment and describing the books and records to be made available. For a business audit, most appointments will be made at the taxpayer's place of business.

If additional time is required to gather the necessary records, requests can be granted for an additional 30 days; delays longer than 30 days require a written explanation for the request.

Consent Form — Generally, the use of a consent form is for the convenience of the taxpayer. Should the taxpayer require additional time beyond the normal (30 day) requirements to secure necessary information, it allows both parties a greater degree of flexibility. In the absence of a consent form, requests for an extension of time beyond 30 days may be difficult to grant. It is the goal of the Division to complete all audits as expeditiously and equitably as possible. A consent agreement also extends the time for filing a refund claim.

Preliminary Conference — At the initial meeting (called the pre-audit conference), the auditor will explain the audit approach and procedures, describe the audit process, and outline protest and appeal procedures. This meeting should be used to ask any questions regarding rights and responsibilities in relation to the audit.

Audit Techniques — There are several different techniques used for conducting audits. The method an auditor chooses will depend on a number of variables, such as the type of tax, the accuracy and availability of records, and the size and complexity of a business.

The Division may conduct a detailed audit, an audit involving the test period method or, in some instances, an audit involving other sampling methods. An indirect method also may be employed if records are deemed inadequate or unreliable. Ideally, both the auditor and taxpayer should agree that the sample and period chosen fairly represent the taxpayer's business activities.

Audit Duration — An audit generally covers a four-year period (with the exception of Gross Income Tax or Inheritance/Estate Tax which have different statute of limitation periods), and can take anywhere from several days to a year or more to complete. The duration of the audit will depend on the complexity of the returns being audited and on the completeness and accuracy of the records.

Audit Findings — If there are changes, the auditor will meet with the taxpayer or their representative to explain the findings and present copies of audit workpapers and schedules. This is referred to as the post-audit conference. The audit findings, as well as the audit methods and procedures, will be explained in simple, nontechnical terms. Findings may include recommended changes in recordkeeping

practices to correct accounting errors found during the audit, an explanation of the proper interpretation of the Tax Law in areas where errors were made, a notice of additional taxes due, or a notification that a refund is due. All notices of assessment related to final audits will be sent by registered or certified mail.

A reasonable period of time is given to review any of the audit findings. The auditor will then analyze any additional information or documentation submitted and, if appropriate, revise the workpapers.

If the audit results in a refund, the auditor will provide any assistance that may be required.

An acknowledgement letter will be sent for any audit resulting in no change.

If You Agree...

If in agreement with the audit findings, the taxpayer will be asked to acknowledge consent by signing the post-audit conference report. If the taxpayer owes money but cannot pay in full, arrangements may be made for a deferred payment plan. You should be aware that interest (and possibly penalties) would continue to accrue on the unpaid balance.

If You Disagree...

Disagreement with the audit findings should be indicated in the post-audit conference report and returned to the auditor. Audit reports are reviewed carefully by supervisory personnel so that additional conferences can be held with the auditor's supervisor if desired. If you continue to disagree with the audit findings, you will be sent a *Notice of Assessment related to Final Audit Determination* or *Notice of Tax Due* for the taxes due. At this point, you may informally appeal the audit findings through the Division's Conference and Appeals Branch. You must file your appeal within 90 days of the date the notice was issued. You must submit a written appeal even if you have previously written to the Division and objected to the position taken in the post-audit conference report.

An Alternative...

As an alternative to protesting or appealing an audit assessment made with respect to tax periods commencing on or after January 1, 1999, a taxpayer who does not timely protest or appeal the assessment may pay the assessment and then file for a refund of the payment. However, the taxpayer must (1) pay the entire assessment within one year after the time for filing the

protest expires and (2) file the refund claim on Form A-1730 with all supporting documentation within 450 days after the time for filing the protest expires.

Penalties and Interest

The four most common reasons for tax penalties are (1) late filing, (2) late payment of taxes, (3) underpayment of estimated tax, and (4) failure to take advantage of New Jersey's Tax Amnesty Program for Amnesty eligible periods. Avoiding penalties and interest is a matter of 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, and/or penalties, both interest and penalties continue to be added to the amount due until payment is received.

Claims for Refund

A taxpayer has always had the right to claim a refund for overpayment of taxes. Generally, the taxpayer has four years to claim a refund for any original tax reported and paid, unless the law provides a shorter time limit for a particular tax. Refunds may be claimed on amended returns or by completing a "Claim for Refund" (Form A-3730) with supporting documentation.

As a general rule the interest will be paid at the prime rate on most refundable overpayments which are held by the State for more than six months from the date of filing or payment. Specific rules should be consulted.

The refund claim form or return to use will depend on the type of claim being made. For information and copies of the appropriate form, you may call 1-800-323-4400 (Touch-tone phones in NJ, NY, PA, DE, and MD) or 609-826-4400 (anywhere).

Your Right to Protest

Disagreement with an action taken by the New Jersey Division of Taxation (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) may be protested by filing a *Request for an informal hearing*.

Hearing — Any taxpayer aggrieved by any finding or assessment of the Director

may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8, and may request a hearing. Thereafter the Director shall grant an informal hearing to the taxpayer, if requested.

Hearings before the Division of Taxation are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

An informal conference is an inexpensive way to resolve protests without a formal hearing. The conference is conducted informally by a conferee who will review all of the evidence presented to determine a fair and equitable result. After the conference, the conferee will issue a determination. This determination will be binding unless you file a petition for an Appeal within 90 days after the informal determination is issued. Further disagreements require appeals to a higher court.

Appeal — Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment, or action of the Director made pursuant to the provisions of the Tax Law, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law.

For further questions concerning the Appeals process, address your requests to:

**State of New Jersey
Division of Taxation
Conference and Appeals Branch
PO Box 198
Trenton, NJ 08695-0198**

Need Help?

Phone

Automated Tax Information System:
1-800-323-4400 (Touch-tone phones in
NJ, NY, PA, DE, and MD) or
609-826-4400 (anywhere)

Customer Service Center:
609-292-6400



- Tax Practitioners' Hotline:
Personal Income Tax —
609-633-6657
Business Taxes — 609-633-6905
- TTY Equipment Users:
1-800-826-6613 (toll-free in NJ, NY,
PA, DE, and MD) or 609-984-7300
(anywhere)

Online

Division of Taxation Web Site:
www.state.nj.us/treasury/taxation/

E-mail:
nj.taxation@treas.state.nj.us



In Writing



- New Jersey Division of Taxation
Information & Publications Branch
PO Box 281
Trenton, NJ 08695-0281

Forms by fax

NJ TaxFax: 609-826-4500



State of New Jersey
Department of the Treasury
Division of Taxation

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