

Your Rights and Obligations Under the Tax Law

A major function of the Department of Taxation and Finance is to help taxpayers understand their rights and responsibilities at each step in the administration and collection of New York State and local taxes administered by the department. Taxpayer awareness of these rights is essential to maintaining the efficiency and fairness of the state and local tax systems.

New York State established a Taxpayers' Bill of Rights in Article 41 of the Tax Law. By furnishing taxpayers with nontechnical statements that explain taxpayers' rights and the department's obligations with respect to audits; the procedures for taxpayers to seek review of adverse decisions of the department, claim refunds, and file complaints; and the procedures the department may use to enforce tax liabilities, the Tax Department assists taxpayers in understanding their rights and responsibilities. If you are involved in these kinds of proceedings with the Tax Department, you will receive a written explanation of your rights.

This publication provides a summary of the pertinent information contained in the nontechnical statements of taxpayers' rights made available to taxpayers at various stages of the tax administration process.

The New York State tax audit

The Tax Department conducts an audit to verify that the correct amount of tax was paid. In accordance with New York State Tax Law during the audit, you will be required to provide the auditor 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 will 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 conflict of interest, the auditor cannot have any personal relationship 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.

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 of your rights are being violated, you should immediately contact the auditor's supervisor.

Your rights during an audit

While you are obliged to cooperate with the auditor, you also need to be aware of your rights during the audit process. These rights are designed to protect you from unreasonable demands, to minimize disruption of your business or personal life during the audit, and to protect you from arbitrary actions.

Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on the Tax Department's right to assert additional tax due (generally, three years after your return was filed), beyond which the Tax Department may not assess tax above what you reported on your return. A written consent to extend the statute of limitations must be obtained prior to expiration of the limitations period. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report the changes made by the Internal Revenue Service (IRS) to a federal tax return (*federal changes*) or filed a false or fraudulent return to evade tax. For income, estate, and corporation tax purposes, generally a taxpayer is required to report a federal change to New York State within 90 days after the final determination of such change, correction, renegotiation, or disallowance and must state whether the determination is correct or incorrect.

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 us to share your tax information with the Internal Revenue Service and other government agencies within defined standards of secrecy and reciprocity.

Representation during an audit

You may represent yourself, have someone accompany you, or have someone represent you at the audit. Any person representing you must have the proper written authorization (power of attorney) from you to act on your behalf. You may retain representation at any time during the audit, and have the right to suspend an interview at any time in order to obtain such representation. However, such suspension to obtain a representative may only be for a reasonable period of time.

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 advance notice to the department, you are permitted to make an audio recording of any in-person interview. The recording will be made at your own expense and with your own equipment. The Tax Department also has the right to record any in-person interview upon advance notice to you. Upon your request, the Tax Department will provide a transcript or copy of the recording to you, but only if you reimburse the department for the cost of transcription or reproducing the recording.

The field audit

Field audits are usually scheduled at least 15 days in advance to give you time to assemble the required records. When you are selected for a field audit, an auditor will usually contact you by phone 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 your place of business to minimize your time away from your business activities. If you need longer than 15 days to gather the necessary records, you can usually request an extension of up to 30 days; for delays longer than 30 days, you must make a written request that substantiates the need for extra time.

Opening conference

At your initial meeting (called the opening conference), the auditor will explain the audit approach and procedures, describe the audit process, and outline your protest rights and appeal procedures in case you disagree with an audit adjustment. You should use this meeting to ask any questions you might have regarding your rights and responsibilities in relation to the audit.

Audit techniques

There are several different techniques used for conducting audits. We may conduct a detailed audit, an audit involving a test period method, or in some instances, an audit involving a statistical sampling method. In addition, the scope of an audit may be

expanded and completed as a multi-tax audit. The method an auditor chooses will depend on a number of variables, such as the type of tax, the accuracy and availability of your records, and the size and complexity of a business.

If preliminary audit findings result in a material effect on the reporting of another tax, those findings may be referred to another tax specialty at any time during the audit process. The 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.

With respect to the sales and compensating use taxes, we may only estimate any additional tax due if, upon our request for records, you have no records or the records that you make available to us are inadequate for us to determine the tax due.

Audit duration

An audit generally covers a three-year period, 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 your records. Most audits, however, take only three to four days to complete.

Field audit findings

If there are no changes recommended by the auditor, you will be sent a letter acknowledging this and thanking you for your cooperation.

If there are changes, the auditor will meet with you to explain the findings and present copies of audit workpapers and schedules. The audit findings as well as the audit methods and procedures, will be explained to you 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. You are then given a reasonable period of time to disapprove any of the audit findings or to document any periods for which the audit test period was not representative of your actual business activity. The auditor will analyze any additional information submitted and, if appropriate, revise and resubmit the workpapers with a *Statement of Proposed Audit Changes*.

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*, and returning the form to the auditor.

If you owe money but cannot pay in full at this time, you can usually make a down payment and work out an installment payment agreement for the rest of the liability (see *Installment payment agreement*). You should be aware, though, that interest (and possibly penalties) will continue to accrue on the unpaid balance.

If you disagree . . .

If you disagree with the audit findings, you should indicate your disagreement on the *Statement of Proposed Audit Changes* and return the form to the auditor. All audit reports are reviewed carefully by supervisory personnel, so additional conferences

can be held with the auditor's supervisor if necessary. If you still disagree with the audit findings, you will be sent a *Notice of Deficiency* or *Notice of Determination* 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. If you decide to appeal, you generally must file your appeal within 90 days of the date the notice was issued. The notice will inform you of the last date by which you must file your appeal. You must submit a written appeal even if you have previously written to the department and objected to the position taken in the *Statement of Proposed Audit Changes*. For a description of both methods of protest, see *Your rights to protest an action taken by the Tax Department* on page 5.

You also have the option of first paying any tax due in order to stop the accrual of additional penalties and interest, and then filing a claim for refund within the time period applicable to the tax involved. If the department denies your claim in whole or in part, you may then choose to formally appeal the denial through either the Bureau of Conciliation and Mediation Services or through the Division of Tax Appeals within the applicable statutory time period.

The desk audit

The desk audit is a review of tax returns, refund requests, or other documents that you have already submitted. A desk audit may also involve an inquiry regarding a return we have reason to believe you should have filed, but we have no record of receiving. Sometimes the audit includes or is based on information obtained from other sources, such as third party information. It takes place solely within the Department of Taxation and Finance, and rarely involves any face-to-face contact between the technician and the taxpayer. You are not routinely notified that a desk audit is taking place; in fact, the only way you will know about a desk audit is if we find it necessary to request additional information, or if we determine that you either owe additional tax or are due a refund.

If additional information is needed, you will receive a letter advising you of the desk audit and listing the specific information required. You will then be given a reasonable period of time to submit the information requested. If it is then determined that there are no changes, the technician will send a letter acknowledging this and thanking you for your cooperation.

Desk audit findings

If there are any additional taxes due, you will receive a *Statement of Proposed Audit Changes* or similar document explaining the reason for the additional taxes. You are then given a reasonable period of time to respond to the audit findings. The technician will analyze your response and, if appropriate, revise the findings and submit a new *Statement of Proposed Audit Changes* or similar document. If, however, the audit results in a refund, you will automatically receive your refund check and a letter of explanation.

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 this time, you can usually make a down payment and

work out an installment payment agreement for the rest of the tax. 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 submit additional information to substantiate your disagreement and return a copy of the statement to the Tax Department. The technician will analyze any additional information submitted and, if appropriate, send you a revised document.

If you still disagree with the audit findings, you will be sent a *Notice of Deficiency* or *Notice of Determination* 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, even if you have previously written to the department and objected to the position taken in the notice of audit adjustments you received. You generally must file your appeal within 90 days of the date the notice was issued. The notice will inform you of the last date by which you must file your appeal.

You also have the option of first paying any tax due in order to stop the accrual of additional penalties and interest, and then filing a claim for refund within the time period applicable to the tax involved. If the department denies your claim in whole or in part, you may then choose to appeal the denial to the Bureau of Conciliation and Mediation Services or to the Division of Tax Appeals within the applicable statutory time period.

Estate tax appeal rights

The issuance of a *Notice of Deficiency* or the formal denial of a refund claim involving estate taxes may be protested by filing a *Request for Conciliation Conference* with the Bureau of Conciliation and Mediation Services (see page 5 of this publication) or by filing a petition to commence a special proceeding in the Surrogate's Court. If you elect not to file a *Request for Conciliation Conference* or if you disagree with a *Conciliation Order*, you must file a *Notice of Petition and a Verified Petition* with the Surrogate's Court of the county having jurisdiction over the estate if you wish to pursue a court action.

The petition must be in writing and must specifically indicate what actions of the Department of Taxation and Finance are being protested. The petition must also be completed and filed in accordance with the applicable statute by the date indicated on the *Notice of Deficiency*, *Notice of Disallowance*, or the *Conciliation Order* that you received.

To obtain a petition form, contact the clerk of the local Surrogate's Court having jurisdiction over the estate. A request for petition forms and rules is not considered the filing of a petition and does not extend the time limits for filing a petition.

A copy of the petition must be filed simultaneously with the Commissioner of Taxation and Finance. Please mail to:

Commissioner of Taxation and Finance
Office of Counsel
Bankruptcy, Estates, and Collection Unit
Bldg 9, Room 100
W A Harriman Campus
Albany NY 12227

Claims for refund

Most taxpayers associate tax refunds with income tax. Most often, income tax refunds result from the overpayment of withholding or estimated tax, in which case the refund is usually claimed when taxpayers fill out their annual income tax returns. These refunds are generated by the Tax Department as part of the initial processing of the filed return.

Refunds may arise from any kind of tax type. Subsequent to the filing of an original return, a taxpayer may discover that a credit, deduction, or exemption was overlooked at the time of the initial filing. For income tax and corporation tax, the filing of amended returns is used to claim such refunds. For most other tax types, seeking a refund or credit of moneys paid to this department requires the submission of a refund application together with documentation substantiating the erroneous tax payment or overpayment.

In the event the department discovers an overpayment of tax made by the taxpayer during the course of an audit, assessment, collection or enforcement proceeding, the department must disclose the overpayment to the taxpayer. The taxpayer has 120 days from the date disclosure is provided to apply for a refund or claim a credit. If application is not made within the 120-day period, the taxpayer loses the right to apply for the refund or credit, unless another provision of law provides for a later time period to apply. However, the department is not required to disclose an overpayment, pay a refund, or grant a credit with respect to a period if, at the time of discovery of the overpayment, the period is closed pursuant to the statute of limitations for the department to assess additional tax or for the taxpayer to apply for a refund.

A claim for refund may be approved for the amount requested, or adjusted or denied. If a claim is approved for the amount requested, you will receive a check for the amount of the overpaid tax plus any applicable interest. If a refund claim is adjusted, you will receive a check for an amount higher or lower than you requested. The check will be accompanied by an explanation of the adjustment(s). If your claim is denied, in full or in part, you will be sent written notification which will explain any protest rights you may have.

Note: All or part of your refund may not be paid to you because you owe other taxes or a debt to this department, to another state agency, to the Internal Revenue Service (IRS), to New York City or to another state. The Tax Department will notify you of this action which is termed a *refund offset*. However, if you have any questions about a debt not owed to this department, contact the other agency, the IRS, New York City or the other state directly. (See *Offsets* on page 7 of this publication.)

If you disagree with the basis for an adjustment or disallowance of a refund by this department, you may submit additional information to substantiate your position, or if you have received a *Notice of Disallowance*, you may request a conciliation conference with the Bureau of Conciliation and Mediation Services or file a petition with the Division of Tax Appeals within the time indicated on the notice. If you have received a *Notice of Disallowance* and submit additional information to the department, but are still not satisfied with the results of this second level of review or have

not received a response from the Tax Department close to the expiration of the time to request a conciliation conference or to file a petition, you may request a conciliation conference with the Bureau of Conciliation and Mediation Services or file a petition with the Division of Tax Appeals within the time indicated on the *Notice of Disallowance*. For income and corporation taxes, such request or petition must be filed within two years from the date the *Notice of Disallowance* was mailed. Other taxes have different time periods to request a conciliation conference or petition for a hearing in the Division of Tax Appeals. For example, if a claim for refund of sales and compensating use taxes is denied, a request or petition must be filed within 90 days of the date the claim is denied. After a request or petition is filed you have the same options as described in *Your rights to protest an action taken by the New York State Department of Taxation and Finance* section of this publication.

There is a statute of limitations on claiming refunds. For most taxes, amended returns and other claims for refund must be filed within three years of the date the original return was due or filed, or within two years of the date the tax was paid, whichever is later.

If no return was filed, then the claim for refund must be filed within two years of the date the tax was paid.

If an income, corporation, or sales and compensating use tax amended return or claim for refund is filed within the three-year period, the allowable refund may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim plus the period of any extension of time for filing the return. If the amended return or claim is filed within the two-year period, the allowable refund may not exceed the portion of the tax paid within the two-year period immediately preceding the filing of the refund claim.

An income, estate, or corporation tax amended return or claim for refund may be filed beyond the time frames mentioned above if the refund is attributable to a reported federal change or correction that is required to be reported to New York State. The amended return or claim for refund must be filed within two years of the date that notification of such change or correction was due.

The refund claim form or return that you must use will depend on the tax for which you are seeking a refund. See *Need help?* on the back of this publication for information on obtaining the appropriate forms and information on the applicable time limits within which you must file your claim for refund.

Penalties and interest

The three most common reasons for penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. In the simplest terms, avoiding penalties and interest is a matter of filing your tax returns and paying the correct amount of taxes on time. If you are unclear about any of your tax responsibilities, use the resources described in this publication to learn more about your filing requirements.

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

Interest and any penalties continue to be added to the amount due until payment is received by the department. All interest is compounded daily. See *Need help?* on the back of this publication to contact the department for the interest rates applicable to the periods for which you owe tax.

Your rights to protest an action taken by the Tax Department

If you disagree with a final action taken by the department, including 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 Form CMS-1, *Request for Conciliation Conference*, with the Bureau of Conciliation and Mediation Services or by filing Form TA-10, *Petition*, for a tax appeals hearing with the Division of Tax Appeals. If the disputed amount is within certain monetary limits, you may elect to have your Division of Tax Appeals hearing held in the Small Claims Unit (see *Small claims option* below). For estate tax, you may protest either by filing Form CMS-1 with the Bureau of Conciliation and Mediation Services or by filing a *Notice of Petition* and *Verified Petition* with the clerk of the Surrogate's Court of the county having jurisdiction over the estate and simultaneously with the Commissioner of Taxation and Finance (see *Estate tax appeal rights* on page 3). An action taken by the department with respect to estate tax cannot be protested through a Division of Tax Appeals hearing.

The request or petition **must** be filed within a certain period from the date the department mailed you notice of its action. Please refer to the notice you received to determine the applicable time limit. These time limits are established by the Tax Law and cannot be extended. We recommend you use **certified** or **registered** mail to file your protest. For purposes of this rule, the filing date is the date the envelope containing the request or petition is post-marked by the United States Postal Service or the date recorded or marked as described in section 7502 of the Internal Revenue Code by a "designated private delivery service." Publication 55, *Designated Private Delivery Services*, lists the private delivery services which are approved for this purpose.

You may appear on your own behalf or you may have an authorized representative to present your case for review. An authorized representative must have a power of attorney from you in order to appear on your behalf. See *Need help?* to obtain forms.

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 send you a proposed resolution in the form of a consent. If you indicate acceptance by signing and returning the consent within 15 days, the protest will be concluded. If the consent is not returned within 15 days, the conciliation conference will be deemed concluded. The conferee will then issue a conciliation order within 30 days after the conciliation conference proceeding is concluded. This order will be binding **unless** you file a petition for a hearing with the Division of Tax Appeals (or in estate tax cases, file a *Notice of Petition* and a *Verified Petition* with

the Surrogate's Court of the county having jurisdiction over the estate) within 90 days after the conciliation order is issued.

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.

You may request a conciliation conference by filing Form CMS-1, *Request for Conciliation Conference*, with the Bureau of Conciliation and Mediation Services. If not included in the department's correspondence, see *Need help?* on page 8 for information on ordering forms. You can also write to:

Bureau of Conciliation and Mediation Services
New York State Department of Taxation and Finance
W A Harriman Campus
Albany NY 12227

Tax appeals hearing

To request a tax appeals hearing, you must file a petition with the Division of Tax Appeals. The petition must be in writing and must specifically indicate what actions of the department are being protested.

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** either you or the department requests review of the decision by the Tax Appeals Tribunal. If such a review is requested, the record of hearing and any additional oral or written arguments will be reviewed and the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or will refer 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. There are time limits within which you may appeal for court review (generally, within four months from when the Tax Appeals Tribunal serves notice of the decision, by certified mail or personal service, on you). 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 appeal for court review.

Small claims option

Instead of a Tax Appeals hearing or a conciliation conference, you may elect to have your hearing held in the Small Claims Unit of the Division of Tax Appeals 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 of which will be provided to you with the petition forms. The small claims 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 a tax appeals hearing by filing Form TA-10, *Petition*. Petition forms and the *Rules of Practice and Procedure of the Tax Appeals Tribunal* may be obtained on the Division of Tax

Appeals and Tax Appeals Tribunal's Web site, www.nysdta.org, or requested by telephone at (518) 266-3000, or by writing to:

Division of Tax Appeals
Riverfront Professional Tower
500 Federal Street
Troy NY 12180-2894

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

Relief from liability as an innocent spouse

If you file a joint return, both you and your spouse are generally responsible for the tax and any interest or penalties due on the return. This means that if one spouse does not pay the tax due, the other may have to pay it. However, you may qualify for relief from liability for tax on a joint return if:

- there is an understatement of tax because your spouse omitted income or claimed false deductions or credits;
- you are divorced, separated, or no longer living with your spouse; or
- given all the facts and circumstances, it would be unfair to hold you liable for the tax.

For more information see, Publication 89, *Innocent Spouse Relief*, and Form IT-285, *Request for Innocent Spouse Relief*, and its instructions.

The collection process

When you have exhausted your rights to appeal your tax liability in the department, the Division of Tax Appeals, and the courts, collection of the liability is turned over to the Tax Compliance Division, the collection unit of the department. The Tax Compliance Division will initially attempt to obtain full payment from you or, in certain circumstances, may negotiate an installment payment agreement, previously known as a deferred payment agreement.

If you are severely financially distressed, you may also decide to submit an offer in compromise to the department. However, the department will not necessarily accept the offer submitted. For example, in most cases, you must be insolvent (your liabilities exceed your assets), and the department's ability to fully collect the liability must be in doubt. For more information on offers in compromise, see Publication 220, *Offer in Compromise Program*.

Installment payment agreement

If you are financially unable to pay the full amount of your liability all at once, you may qualify for an installment payment agreement. (To apply, call the department at 1 800 835-3554.) You will be required to establish a direct payment arrangement with your bank, under which installment payments would be automatically withdrawn and remitted on a monthly basis to the Tax Department's processing bank.

Under the department's installment payment agreement, you are allowed to pay off your total tax liability in monthly installments. However, your agreeing to pay your tax debt through an installment plan does not put a cap on the total amount you owe.

Until your tax liability is satisfied, interest and any penalty will continue to accrue on any unpaid balance.

To qualify for an installment payment agreement, you may be required to complete a financial statement and supply other information to substantiate your present financial condition and your present inability to make full payment. Also, you must file returns and pay all future taxes as they become due. If you do not pay your new tax liabilities on time, you will be in default under the agreement. After the department gives you notice, collection action may then resume on the liability under the payment agreement, or the department may modify or terminate the agreement.

Whether or not you enter into a payment agreement, the department may also file a tax warrant with the appropriate County Clerk and the Secretary of State. The warrant helps protect the interests of the state and secures the debt. The warrant ensures the department's priority over your subsequent creditors. The nature of the tax warrant and its impact are described below.

The department may terminate an installment payment agreement at any time without notice if it believes collection of the tax pursuant to the agreement is in jeopardy. However, the department may only terminate or modify an installment payment agreement upon at least 30 days prior notice, explaining the reason for its actions, in the following situations:

- if the information you supplied before entering into the agreement is found to be inaccurate or incomplete;
- if your financial condition changes significantly;
- if you fail to pay an installment payment or any other tax liability when due; or
- if you fail to supply the department with updated information regarding your financial condition when requested to do so by the department.

If you do not satisfy your full tax liability or negotiate an installment payment agreement, or if an offer in compromise is under review, withdrawn, or rejected, any or all of the following activities may be used to collect your tax liability.

Tax warrant

A tax warrant may be filed against you. A tax warrant is the equivalent of a legal judgment against you and creates a lien against your real and personal property when filed. The warrant is a public record, on file at your County Clerk's office and with the Secretary of State. It publicly acknowledges that you owe New York State taxes and may adversely affect your credit rating. It may make it difficult for you to get a loan or buy or sell real property. A warrant remains on file with the County Clerk and the Secretary of State until the tax liability is satisfied or the warrant expires.

A filed tax warrant secures the state as a lienholder of your personal and real property and empowers the department to use certain collection procedures.

Levy

A levy is a legal seizure of your property. Before any tax is collected by levy, the department will provide you with a written notice. The department will also provide you with a notice of the

types of property that are exempt from levy. Most frequently, a levy is made on bank accounts, and requires a bank to remove money from your account and send it to the department. A levy can also be made on money that any third party owes you, such as a loan or rent owed to you. If you are a business taxpayer, a levy can be made on the cash in your register. Property will not be levied on if the department estimates that the expenses to levy and sell the property are greater than the expected sale proceeds.

Income executions

An income execution is a type of levy that may be issued against your wages. Under an income execution procedure, subject to certain income thresholds, you will be asked to voluntarily submit a fixed amount of your wages, up to 10% of your gross earnings, to the department. If you do not voluntarily pay this amount within 20 days of receiving the department's notice and continue to pay this amount until the debt is satisfied, your employer will then be ordered to take up to 10% of your gross wages, subject to certain income thresholds, directly out of your paycheck and pay it to the department on your behalf. The income execution remains in effect until the outstanding tax liability is satisfied.

Seizures and sales

Your real or personal property that is not exempt by law may be seized and sold at a tax auction. The department will only initiate a seizure if it believes that the proceeds from a sale at public auction will at least cover the estimated expenses for the seizure and sale.

During a seizure, tax compliance agents may have the locks changed at your place of business, denying you access to your place of business and your business assets. Alternatively, agents may remove all of the merchandise at your business and store it elsewhere until the sale.

After a seizure, the department will advise you of the date of the intended sale. At any time before the sale begins, the property will be released and returned to you if you fully pay the tax, penalty, and interest owed, along with the expenses the department incurred in the seizure and the preparation for the sale.

You have the right to request that any seized property be sold within 60 days of the request or within some longer specified period. Your request will be honored unless it is in the state's best interest to retain the property for a longer period, in which case you will be notified.

Your property will be sold for the fair market value of such property sold in an auction sale in accordance with the Civil Practice Laws and Rules, taking into account the condition of the property, the type of sale, and anticipated expenses.

Once your assets are sold at public auction, the department will send you an accounting of the disbursement of sale proceeds. If the proceeds exceed your debt and the department's expenses, the surplus will be returned to you.

Offsets

Any payment the state may owe you for goods or services you sold or provided to any state agency or instrumentality may be withheld and instead applied against any tax liability you owe to the state. Thus, rather than receiving payment from the state for the goods or services, your payment may be automatically diverted to the Tax Department and applied against your existing tax liability. If

any payment due you is the subject of this kind of offset, we will send you prior written notification about the money that will be sent to the Tax Department to cover your tax liability.

Also, under certain circumstances, any New York State tax refund due you may be offset to pay unpaid tax liabilities, or it may be sent to another state agency, the IRS, New York City, or another state to which you owe money or taxes. The other state agency, the IRS, New York City, or the other state will first notify you and then apply your refund to your debt.

If you have a past due and clearly enforceable New York State, city of New York, or city of Yonkers income tax debt, it will be referred to the U.S. Department of the Treasury Offset Program. Your federal income tax refund, up to the amount of your debt, will be paid to this department.

Release of levy

The department will release a levy on all or part of your property, and send you notice of the release, if:

- you pay the underlying liability or it becomes unenforceable by lapse of time;
- releasing the levy will facilitate collection of the liability;
- you enter into an installment payment agreement that specifically provides for release of the levy;
- the fair market value of the seized property exceeds your tax liability, and release of part of the property can be made without hindering timely collection of your liability; or
- the department determines that the levy is creating an economic hardship due to your financial condition.

If the department seizes property essential to your trade or business, we will determine expeditiously whether the property can be released on the grounds stated above.

If we release the levy on your property, we are not prohibited from future levy of the property if it is necessary to collect your tax liability.

If property is wrongfully levied on, the department may return the property seized, money equal to its fair market value or the amount of money seized, with interest.

Responsible person assessments

For certain taxes such as sales and compensating use taxes, withholding tax, and the motor fuel excise tax, so called *responsible persons* of a business may be held personally liable for the business debts. You may be deemed a *responsible person* if you are an officer, director, or employee of a corporation or dissolved corporation, or employee of a partnership or sole proprietorship who was under a duty to act for the business to comply with the relevant provisions of the Tax Law.

Factors that will be considered in determining whether you are under a duty to act on behalf of a business include whether you sign the tax returns or maintain the books or records for the business or are responsible for the business' management. Under certain circumstances, you may be issued a responsible person assessment even if you are not under a duty to act for the business. For example, with respect to the sales and compensating use and motor fuel excise taxes, a responsible person assessment may be

issued against you if you are a member of a partnership, whether or not you have a duty to act on behalf of the partnership.

If the department issues a responsible person assessment against you and you do not agree with it, you have 90 days from the issuance of the assessment to appeal by either requesting a conciliation conference or petitioning for a Division of Tax Appeals hearing. The appeal entitles you to a hearing to present any information you may have to refute the assessment. A full explanation of your rights to protest an assessment will be included with the original assessment document. With respect to the sales and compensating use taxes only, you will be deemed to have appealed if your business requests a conciliation conference or petitions for a tax appeals hearing with respect to the same tax liability. However, if you are not certain that the business has appealed in a timely manner, and you wish to appeal the assessment, you should request your own conciliation conference or petition for a tax appeals hearing.

Once a responsible person assessment is final, all collection methods available to the department can be used against the responsible person's assets. You can be personally assessed for the full amount of the tax the business owes, even if there are other entities or persons involved who may be similarly assessed. In most cases, responsible person tax debts cannot be discharged by bankruptcy of the business.

Estate tax liability of executors and transferees

For estate tax, if the estate does not pay the estate tax due, you may be held personally liable for some or all the estate tax due if either you act as the estate representative (executor, administrator, etc.) or if you possess or receive property included in the New York gross estate.

Trust accounts

If you are a business taxpayer owing sales and compensating use taxes or withholding taxes, the department may require you to establish a *trust account* with a bank for depositing taxes as they are collected from customers or withheld from employee wages. The trust account will help ensure that the taxes due are available when the tax returns are due.

The department will require you to set up a trust account when your past performance indicates chronic tax delinquencies.

Revocation or suspension of *Certificate of Authority*

The department may revoke or suspend your *Certificate of Authority* to collect sales and compensating use taxes for willful failure to comply with certain requirements of the Tax Law, such as willfully failing to file a return or to pay tax. If your *Certificate of Authority* is revoked or suspended, you will be prohibited from engaging in any business in New York State for which a *Certificate of Authority* is required. If you try to remain in business with a revoked or a suspended certificate, or start a new business without a required certificate, civil and criminal penalties may be imposed.

If the department institutes a *Certificate of Authority* revocation or suspension proceeding, you will be notified of the proceeding and

of your rights during each step of the process. The process may be stopped at any time if circumstances warrant it, such as if you satisfy your liability.

Representation during a collection activity

You may represent yourself or designate another person to represent you before the department. If your representative contacts the department without you, he or she must file Form POA-1, *Power of Attorney*, beforehand. You can get power of attorney forms at any local district office, by calling 1 800 462-8100, from our Web site at www.nystax.gov, or from our fax-on-demand service at 1 800 748-3676.

Licenses and collateral

Your right to engage in certain businesses (e.g., terminal operator) may be curtailed by cancellation or suspension of your license if taxes are not paid. Any bond or other collateral you may have posted for issuance of a license may be liquidated and applied to your tax debt. If a bond is canceled, you must obtain a new bond before you can resume the business activities for which a bond is required.

Resolving a problem or filing a complaint with the Tax Department

If you have a problem with the Tax Department which you have not been able to resolve through normal channels, or if for any reason you have a complaint about the Tax Department, call 1 800 225-5829.

Our representatives will, depending upon the nature of your complaint, either assist you in resolving the matter, or refer your complaint for further investigation and analysis.

Need help?



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



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Business Tax Information Center: 1 800 972-1233

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



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 1 800 972-1233.