

YOUR RIGHTS AS A TAXPAYER



The information presented is current as of this publication's print date. Visit our Web site at www.nystax.gov for up-to-date information.

About this publication

Publication 38 provides general information to help you understand your rights and responsibilities when dealing with matters administered by the New York State Department of Taxation and Finance.

This publication begins with a *Declaration of taxpayer rights* concerning matters such as **courteous service, confidentiality, representation, and resolving problems**. Further information is provided regarding the administration of **audits, appeals, collections, and refunds**.

References are also provided to other publications and documents that explain taxpayers' rights. Copies of these documents are available by mail, fax or by visiting our website, www.nystax.gov. For additional contact information see the *Need help?* section on the back cover of this publication.

Although accurate, the information in this publication has been simplified. If there is any discrepancy between it and the Tax Law or regulations, the Tax Law and regulations will govern.

Declaration of taxpayer rights

Protection of your rights

The employees and authorized representatives of the New York State Department of Taxation and Finance (Tax Department) will explain and protect your rights as a taxpayer throughout your contact with us. We will also provide you with written explanations of your rights.

Privacy and confidentiality

The Tax Department is prohibited from disclosing to anyone the information you give us, except as authorized by law. You have the right to know why we are asking you for information, how we will use it, and what will happen if you choose not to provide the requested information.

Professional and courteous service

You are entitled to receive fair, courteous, and professional treatment. If you believe that a Tax Department employee or representative has not treated you accordingly, please contact that employee's supervisor or call 1-866-698-2944.

Representation

When contacting the Tax Department regarding your tax return or any notices received from us, you may choose to represent yourself or you may choose to have someone represent you by providing proper written authorization, such as a power of attorney. Someone may accompany you at an interview. You may make sound recordings of any interviews with a Tax Department employee, provided that you notify us of your intentions in advance.

Resolving a problem/filing a complaint

If you have a tax problem which you have repeatedly attempted to resolve and you have been unable to do so, or if for any reason you have a complaint about the Tax Department, call 1-866-698-2945. Our representatives will refer your complaint for further investigation and analysis.

Audits, appeals, collections, and refunds

Audits

You are responsible for paying only the correct amount of tax due under the law - no more, no less. If we inquire about your return by mail or select it for an audit, we are not suggesting that you are dishonest. The inquiry or audit may or may not result in additional tax due, or it may result in a refund or credit.

Audits by mail

We handle many audits and inquiries by mail. We will send you a letter requesting either more information or an explanation of why we believe a change to your return may be needed. You will have a reasonable period of time to give us the requested information or explanation. If we determine that additional tax is due, we will send you a statement

explaining the proposed changes to your tax return. The statement will have an address and telephone number for you to contact us if you have any questions. If you do not agree with the proposed changes, you can appeal them. However, there are no formal prepayment hearing rights where tax, interest, and/or penalty: 1) is owed due to mathematical or clerical errors on a return, 2) is owed due to changes made to the taxpayer's federal return by the Internal Revenue Service or other competent federal authority, or 3) is owed because the taxpayer has not paid all or part of the amount of the tax that the taxpayer has shown as due on the taxpayer's return.

Audits at your site

If we notify you that we will conduct an audit by a personal interview, we will contact you in advance to give you time to assemble your records. If additional tax is due at the end of the audit, the auditor will provide you with a statement explaining the proposed changes to your tax return. If you do not agree with the proposed changes, you can appeal them. Publication 131, *Your Rights and Obligations Under the Tax Law*, gives you more information about the rules and procedures of an audit.

Disclosure of overpayments

The Tax Department must disclose to a taxpayer any overpayment of tax that is discovered by the department during the course of an audit, assessment, collection or enforcement proceeding except overpayments for periods which are not open for assessment or refund by virtue of any period of limitations provided for in any tax. The taxpayer has 120 days from the date the department provides a notice of disclosure to apply for a refund or claim a credit. For more information, see TSB-M-02(1) I, *Summary of Legislative Changes Enacted in 2001*.

Appeals

If you do not agree with an action taken by the Tax Department (such as the issuance of a tax deficiency/determination, the denial of a refund claim, or the denial or revocation of a license, registration or exempt organization status), you have the right to appeal the action. Most differences can be resolved without expensive and time-consuming court proceedings. Publication 131, *Your Rights and Obligations Under the Tax Law*, explains how to appeal the action. In some instances, you may be able to recover a portion of your administrative and litigation costs if a court finds that our position in an action was largely unjustified. However, you will not be eligible to recover these costs if you have not tried to resolve your case administratively first and you have not previously provided all the information necessary to resolve your case.

Collections

Publication 125, *The Collection Process*, explains some of the possible consequences if you fail to pay an assessed tax liability. After you have exhausted your rights to appeal your liability for tax in the Tax Department, the Division of Tax Appeals, and the courts, or if you fail to request an appeal within the time period required by law, the liability becomes fixed. Collection of the liability is the responsibility of the Tax Compliance Division, the collection unit of the Tax Department.

Publication 125 contains information on how to apply for an installment payment agreement if you are unable to pay the entire amount when it is due. It also gives an overview of the legal enforcement procedures the department may use to collect your tax debt if you fail to pay, or fail to make arrangements to pay, an assessed tax liability.

Relief from liability as an innocent spouse

If you file a joint income tax 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 income tax return if: 1) there is an understatement of tax because your spouse omitted income or claimed false deductions or credits, and you were unaware of the omitted income or false deductions or credits, 2) you are divorced, separated, or no longer living with your spouse, or 3) given all the facts and circumstances, it would be unfair to hold you liable for the tax. For more information, see Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)* and Form IT-285-I, *Instructions for Form IT-285*.

Refund of nonobligated spouse

If you want to disclaim your spouse's defaulted student loan, past-due child or spousal support or a past-due legally enforceable debt owed to a New York State agency, because you do not want to apply your part of a joint income tax refund or refundable credit to a debt owed solely by your spouse, use Form IT-280, *Nonobligated Spouse Allocation*.

Form IT-280 must be completed and attached to the front of your original return when filed, or to Forms IT-215, *Claim for Earned Income Credit*, IT-216, *Claim for Child and Dependent Care Credit*, or IT-217, *Claim for Farmers' School Tax Credit*, if any of these credit forms are filed alone because you did not claim the credit(s) when you filed your return. However, you will be notified if your refund is applied against any of the above mentioned debts of your spouse and you did not attach Form IT-280 to your return. You will then have ten days from the date of notification to file Form IT-280.

Refunds

You may file a claim for refund if you believe that you paid too much tax. While the actual time period to apply for a refund varies by tax type, as a general rule you must file a claim for refund within three years of the date your original return was due or filed or within two years of the date the tax was paid, whichever is later. Contact us at the telephone numbers listed at the end of this publication for help in identifying and obtaining copies of the appropriate forms to file a claim for refund. Forms are also available on the Department's Web site (<http://www.nystax.gov>).

Generally, the law provides for interest on your refund if we do not pay it within a specified period of time from the date you filed your return or claim for refund. For example, interest will be paid on your personal income tax refund if we do not pay it within 45 days after the due date of your return or the date you filed, whichever is later. This time period varies by tax type. Publication 131, *Your Rights and Obligations Under the Tax Law*, has more information on refunds.

Taxpayer Bill of Rights

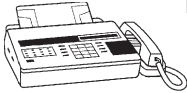
For information concerning additional rights and protections in the Taxpayer Bill of Rights, see :

- TSB-M-93(2)I, *Chapter 770 of the Laws of 1992*
- TSB-M-97(5)I, *Taxpayer Bill of Rights Act of 1997*
- TSB-M-02(1)I, *Summary of Legislative Changes Enacted in 2001*
- TSB-M-03(7)I, *Legislative Amendment Relating to the Abatement of Interest Attributable to Misappropriated Payments*
- Publication 89, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*

Need help?



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



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



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

To order forms and publications: 1 800 462-8100

Business Tax Information Center: 1 800 972-1233

Personal Income Tax Information Center: 1 800 225-5829

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



Hotline for the hearing and speech impaired:

If you have access to a telecommunications device
for the deaf (TDD), contact us at 1 800 634-2110. If
you do not own a TDD, check with independent living
centers or community action programs to find out
where machines are available for public use.



Persons with disabilities: In compliance with the
Americans with Disabilities Act, we will ensure that
our lobbies, offices, meeting rooms, and other facilities
are accessible to persons with disabilities. If you have
questions about special accommodations for persons
with disabilities, please call 1 800 972-1233.