



The New York State Tax Audit – Your Rights and Responsibilities

The Department of Taxation and Finance conducts audits to verify that taxpayers paid the correct amount of tax. During the audit, you may need to provide the auditor with whatever records are necessary to verify the information you reported 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

Audits are conducted in accordance with professional auditing standards by a Tax Department 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 must 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 audit you feel these standards or any of your rights are being violated, you should immediately contact the auditor's supervisor.

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

**NYS TAX DEPARTMENT
OFFICE OF INTERNAL AFFAIRS
W A HARRIMAN CAMPUS
ALBANY NY 12227-0811**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

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 you failed to file a return, failed to report federal changes, or filed a false or fraudulent return to evade tax. For more information visit our website (see *Need help?*).

Privacy and confidentiality

You have the right to know why we are requesting certain information, how we will use the information, and the consequences if you fail to submit the information. The Tax Law prohibits us from disclosing information obtained from a tax return or during an audit, to any unauthorized person. The Tax Law, however, does permit us to share your tax information with the Internal Revenue Service (IRS) and

other government agencies, within defined standards of secrecy and reciprocity.

Representation

You may retain representation at any time during an audit, or suspend a meeting or interview at any time to obtain representation. Any person representing you must have the proper written authorization (Form POA-1, *Power of Attorney*) from you to act on your behalf.

Former employees of the Tax Department 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

You may make an audio recording of any in-person interview by providing advance notice to us. You must make the recording at your own expense and with your own equipment. We also have the right to record any in-person interview with advance notice to you.

The field audit

We usually schedule field audits 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 contact you to set up the initial appointment. You will receive a letter confirming the appointment and describing the books and records you must make available. For a business audit, most appointments will be at your place of business.

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 explains your reason for the request.

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.

Use this meeting to ask any questions you might have about your rights and responsibilities during the audit.

Audit methods

There are several different methods to conduct audits. We may conduct:

- a detailed audit,

- an audit involving the test period method, or,
- an audit involving a statistical sampling method.

The method an auditor chooses will depend on several variables, such as the type of tax, the accuracy and availability of records, and the size and complexity of a business.

In addition, the scope of an audit may be expanded and completed as a multi-tax audit.

If preliminary audit findings result in a material effect on the reporting of another tax, we may refer the findings to another tax specialty at any time during the audit process. We may use audit adjustments of one tax specialty as a basis to recalculate tax in another, depending on the facts and circumstances of the case.

Audit period and duration

An audit generally covers a three-year period, and can take as little as several days or up to a year or more to complete. The duration depends on the complexity of the returns being audited, and on the timely availability, completeness, and accuracy of your records.

Audit findings

If we determine no changes are necessary, we will send you a letter stating that no changes will be made to your return, refund request or documents.

If there are changes, the auditor will present copies of audit work papers and explain the audit findings, as well as the audit methods and procedures used in the audit 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 notice of a refund due.

We will give you a reasonable amount of time to review the audit findings. The auditor will then analyze any additional information you submit and, if appropriate, revise and resubmit the workpapers.

If the audit results in a refund, the auditor will provide any assistance you may require.

If you agree

If you agree with the audit findings, we will ask you to sign the proposal, and to return it to the auditor with full payment.

If you owe money but cannot pay in full immediately, you may be eligible for an installment payment agreement, which allows you to spread your payments out over time. However, interest (and possibly penalties) will continue to accrue on the unpaid balance.

If you disagree

If you do not agree with the audit findings, indicate your disagreement on the proposal and return it to the auditor.

You may request additional conferences with the auditor's supervisor if necessary.

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 appeal the audit findings through either the Bureau of Conciliation and Mediation Services, or through the Division of Tax Appeals. Generally, you must file your appeal within 90 days of the date the notice was issued. (See *Your right to protest an action taken by the Tax Department*, below). **Refer to the notice you received for the applicable time limit.** You must submit a written appeal even if you have previously written to the department and objected to the position taken in the proposal.

Penalties and interest

The three most common reasons for penalties are:

- late filing,
- overdue taxes, and
- 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 even if you owe no tax.

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 full 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, you may discover you overlooked a credit, deduction, or exemption. For some tax types, you must file an amended return to claim the refunds. For other tax types, you must submit a refund claim together with documentation substantiating the erroneous tax payment or overpayment. For more information, see *Need help?*

If we adjust or deny the refund you request, we will send you a written notice to explain any protest rights you may have. If you disagree with the adjustment or disallowance of a refund, you may submit more information to substantiate your position. If you still disagree after our review, you may protest with 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 limit in which to protest our determination with the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, your time to request such review is not extended by further correspondence or contact with us.

Your right to protest an action taken by the Tax Department

If you disagree with an action taken by us, you may protest by filing Form CMS-1-MN, *Request for Conciliation Conference*, for a conference with the Bureau of Conciliation and Mediation Services, or by filing Form TA-100, *Petition*, for a tax appeals hearing with the Division of Tax Appeals.

You **must** file the request or petition within a certain period from the date the Tax Department mailed you notice of its action. **Refer to the notice you received for the applicable time limit.** These time limits are established by the Tax Law and cannot be extended. If you are mailing your request or petition, 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 (Form POA-1).

You have no prepayment hearing rights if you owe tax, interest, or penalty due to:

- mathematical or clerical errors on a return,
- changes made to your federal return by the IRS, or
- your failure to pay all or part of the tax due that is shown on your return.

Conciliation conference

A conciliation conference is a faster and less expensive way to resolve protests without a hearing. The conference is informally conducted by a conciliation conferee, who will review all 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. This conciliation order is binding **unless** you file a petition, Form TA-100, with the Division of Tax Appeals. Refer to the information you receive with the order for the applicable time limit to file.

Conciliation 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. Only the Division of Tax Appeals may handle these issues.

Tax appeals hearing

To request a tax appeals hearing, you must file Form TA-100 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 adversarial proceeding before an impartial administrative law judge. It will be stenographically reported. After the hearing, the administrative law judge will issue a determination which will finally decide the matters in dispute **unless** you or the Tax Department request a review of the decision made by the Tax Appeals Tribunal. If that happens the Tribunal will:

- review the record of the hearing and any additional oral or written arguments, **and**

- issue a decision affirming, reversing, or modifying the administrative law judge's determination, **or**
- refer the matter back to the administrative law judge for further hearing.

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 does not extend the time limits for filing a petition.

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 you notice of the decision, by certified mail or personal service). 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: If the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure* of the Tax Appeals Tribunal, you may elect to have your hearing held in the Small Claims Unit of the Division of Tax Appeals. An impartial presiding officer conducts the small claims hearing. 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.

Form TA-100, and the *Rules of Practice and Procedure* of the Tax Appeals Tribunal are available on the Division of Tax Appeals website at www.dta.ny.gov. You may also request them by calling 518-266-3000, or by writing to: Division of Tax Appeals, Agency Building 1, Empire State Plaza, Albany NY 12223.

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

Personal Income Tax Information Center:	518-457-5181
Corporation Tax Information Center:	518-485-6027
Sales Tax Information Center:	518-485-2889
Withholding Tax Information Center:	518-485-6654
Miscellaneous Tax Information Center:	518-457-5735

To order forms and publications:	518-457-5431
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Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service
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