

Preparing for your

PROTEST

and

CONFERENCE

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New Jersey Division of Taxation
Office of Counsel Services
Conference and Appeals
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PREPARING FOR YOUR PROTEST AND CONFERENCE

This brochure addresses frequently asked questions about the filing of protests in response to certain notifications issued by the Director, Division of Taxation. The information provided includes how to properly prepare a protest and lets you know what to expect during the conference process.

What Is a Protest?

Protest

A protest is a written disagreement with certain assessments or findings made by the Director, Division of Taxation, or his appointed representative. A protest must be filed according to the New Jersey Administrative Code *N.J.A.C. 18:32-1.1 et seq.* See “*What Must Be Included in a Protest?*” on page 6. A protest will generally include a request for an informal conference with Conference and Appeals. A protest is sometimes improperly referred to as an appeal. An appeal is formally made via the filing of a complaint with the Tax Court of New Jersey. Taxpayers usually protest first to Conference and Appeals before considering filing an appeal with the Tax Court.

Conference and Appeals

Conference and Appeals within the Division of Taxation provides timely and final administrative review, making every possible attempt to resolve protests between the Division and taxpayers in accordance with applicable statutes and regulations. Outside representation (e.g., attorney or accountant) is not required for the conference; however, taxpayers have the right to obtain such representation. Because of the strict provisions of confidentiality, Division personnel may not discuss any aspect of the case with any representative without written authorization by the taxpayer in the form of a properly completed Power of Attorney (FormM-5008) which will be provided to you.

Conference

A conference or hearing is an informal meeting or discussion with a conferee who will review all of the available evidence to ascertain the facts concerning the protested issue in order to determine a fair, legally supportable conclusion which is in the form of a written Final Determination. Conferences may be held in person or by telephone for your convenience. There are usually no written transcripts of the conference.

What Are Some Examples of Notices That I Can Protest?

Protestable Notices

Notices issued by the Division that include appeal rights information are protestable. Some examples of protestable notices include:

- Notice of Assessment Related to Final Audit Determination,
- Notice and Demand for Payment of Tax,
- Notice of Finding of Responsible Person Status,
- Notice of Assessment (Deficiency),
- Gross Income Tax Notice of Deficiency,
- Notice of Jeopardy Assessment,
- Notice of Estimated Tax Assessment,
- Notice of Tax Due, and
- “Formal Notice” Nexus letter.

Notices That Cannot Be Protested

Notices issued by the Division that do not include appeal rights information are usually not protestable. An example of a commonly issued nonprotestable notice is the Statement of Account notification. This is the first notice that the Division sends to a taxpayer to advise that their account has been adjusted or is underpaid. You should attempt to resolve this statement by providing additional information to the section that sent the notice. Examples of other nonprotestable notices include: disagreements with post-audit conferences (wait for the Assessment Related to Final Audit Determination), Proposed Determination Nexus notices, Surety Request letters, and some Notice and Demand letters that are being used as collection tools for audit assessments that were not protested. Items labeled as “deficient” included as part of the liability on a Notice and Demand letter are not eligible for protest. These items usually are created when you file a return, such as sales tax, and do not pay the entire amount due. This is considered a self-assessment and not subject to protest. If you do protest a notice for which there are no appeal rights, you will receive a written response from Conference and Appeals advising you that the notice you received is one that cannot be protested and your correspondence will be forwarded to the current caseworker for review.

When Should I Protest?

Ninety Days

In accordance with *N.J.S.A. 54:49-18*, the taxpayer is given **90** calendar days from the date of the notice to file a written protest with Conference and Appeals. If the 90th day falls on a weekend or holiday, the next business day is deemed the 90th day. Although not required, it is to your advantage to mail the protest using a form of mailing for which proof of mail can be demonstrated. This could include, but not be limited to, certified mail return receipt, or an express delivery service such as Federal Express or United Parcel Service. (If a *Notice of Deficiency for Gross Income Tax* is mailed to you outside of the United States, you are given 150 days from the mailing of the notice to file a protest.)

Determination of Timeliness

The New Jersey Administrative Code at *N.J.A.C.18:2-4.1-4.13* addresses various types of postmarks that are used in the determination of the timeliness of your protest. The regulations govern U.S. postmarks; foreign postmarks; metered postmarks; multiple, illegible and absent postmarks; and “express” deliveries. Each type of mailing postmark is explained as follows:

U.S. Postmark – If the postmark on the envelope or wrapper containing the protest is made by the United States Postal Service, to be considered timely, such postmark must show a date stamped which is within 90 days of the date of the protestable notice, *not* from the date that the taxpayer received the notice. Also, if the stamped date is not within the 90 days, it will be deemed late no matter when the envelope or wrapper was deposited in the mail.

Example - If the taxpayer received the notice on June 8, 2005, but the certified mail date was June 3, 2005, the certified mail date is what is used to determine when the 90th day of the appeal response would land. The taxpayer subsequently files a protest U.S. postmarked September 1, 2005, but was received by the Division on September 6, 2005, the postmarked date of September 1, 2005 is what is considered for the 90 day appeal process. The appeal postmarked September 1, 2005 is considered timely. If the postmarked date was September 2, 2005 or later it would be considered untimely as it would be the 91st day and so on of the appeal cycle.

Metered Mail – Protests stamped by a postage meter and not postmarked by the United States Postal Service shall be considered to be mailed and postmarked three days prior to the date upon which the protests are received (date-stamped) by the Division.

Example - On June 8, 2005, the taxpayer receives a notice by certified mail dated June 3, 2005. The taxpayer subsequently files a protest metered September 1, 2005, but the protest is received (date-stamped) by the Division on September 6, 2005. The protest is considered late because three days prior to the received date (September 3) is not within the 90-day due date of September 1, 2005.

Express Delivery – Where delivery of protests is made by Federal Express, United Parcel Service, or other similar service, such documents shall be considered filed one day prior to the date upon which the protests are received (date-stamped) by the Division.

Example - On June 8, 2005, the taxpayer receives a notice by certified mail dated June 3, 2005. The taxpayer subsequently files a protest on the 90th day, sending it by Express Mail on September 1, 2005. The protest is received (date-stamped) by the Division on September 2, 2005, and is considered timely filed because it was filed on the 90th day.

Foreign Postmark – If the envelope or wrapper containing the protest is mailed from a foreign country and received by the Division, the date of the official postmark stamped on the envelope or wrapper will be considered to be the date of filing. The envelope or wrapper must be properly addressed, have sufficient postage prepaid, and show a date stamped by such foreign country's official postal service which is within 90 days.

Multiple Postmarks – If the envelope or wrapper containing the protest has a postmark made by the United States Postal Service in addition to other postmark types, such as metered mail, the United States Postal Service postmark will determine the filing date.

Illegible and Absent Postmarks – If the envelope or wrapper containing the protest shows sufficient prepaid United States postage but the postmark is illegible or missing, the protest shall be deemed filed three days prior to its receipt (date-stamped) by the Division.

Protests Not Filed Timely

If a review of your protest reveals that it was not filed within the required 90-day time frame, you will receive a letter advising you that the protest was not received timely and you will be advised of the right to appeal to Tax Court on the issue of timeliness. Your correspondence will be forwarded to the caseworker currently handling your file.

What Must Be Included in a Protest?

The New Jersey Administrative Code at *N.J.A.C. 18:32-1.1 et seq.*, defines a proper protest. **All of the following items must be included:**

- √ The signature, under oath, of the taxpayer, the taxpayer's duly authorized officer, or duly authorized representative;
- √ The taxpayer's name, address, telephone number, and social security number and/or tax identification number;
- √ The name, address, and telephone number of taxpayer's representative, if any, for the purpose of the protest. In such case, a written Power of Attorney (Form M-5008) shall be included with the notice of protest;
- √ The type of tax(es) and period(s) under protest;
- √ A copy of the notice being protested;
- √ The specific amount, if known, of tax, penalty, and/ or interest under protest, and the specific amount of tax, penalty, and/or interest uncontested;
- √ A statement of the grounds upon which the protest is based;
- √ The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of the taxpayer's contention. (If this

requirement cannot be met within the 90-day period, the Division will, upon written request, extend the time for complying with the submission for an additional 90 days.); and

- √ Payment of the entire uncontested amount of the tax, penalty, and interest, if any. Failure to submit payment will not invalidate the protest but the Division, in accordance with applicable law, may proceed to collect outstanding amounts which are due.

Where Do I Send My Protest?

Mail

Protests and requests for administrative hearings or conferences may be mailed to:

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

Some **notices** may show an address different from the one above for you to mail in your protest. In those instances, you may use the address indicated in your notice. Some of these may be:

For protests of –

- Jeopardy Assessments:
PO Box 245 and
- Certain Nexus protests:
PO Box 264
- Responsible Person protests:
PO Box 285

The processing of your protest will be expedited by using the address contained in your notice.

Fax

Faxes are date-stamped with the Division's receipt date and should then be followed by a mailed original (hard copy) which is also date-stamped, as is all incoming mail. The fax number for submitting a protest and request for administrative hearing is **609-631-7000**.

Express or Hand-Delivery

Hand-delivered or "express" mail is date-stamped by the Division upon receipt. The current address for this type of delivery is:

New Jersey Division of Taxation
Conference and Appeals Branch
50 Barrack Street
Trenton NJ 08695-0198

I've Sent My Protest, What Happens Next?

Proper/Improper Protest

When the protest is properly prepared, you or your representative will receive an acknowledgment letter. If the protest is not proper as defined in *"What Must Be Included in a Protest?"* on page 6 of this brochure, you will receive a letter requesting the missing information. If the missing information is not provided by the requested date, the protest will not be considered complete and a Final Determination may be issued based only on the information in the file.

In-Depth Review of Incoming Protests

An intensive review of the incoming protests is now undertaken and more comprehensive information is requested from the taxpayer at that time. This helps both the taxpayer and the conferee assigned to the case to be better prepared for the conference, and the review and discussion process may even eliminate the need for an in-person conference.

Complete Protests

Where issues are black and white, and the taxpayer has adequately documented their protest, every attempt is made to resolve matters quickly, often by way of a telephone conference.

Expedited Conferences

When a protest has received a full review and/or is complete, there still may be a need to have a conference. If the protest involves a single issue, a complete protest has been made and there are no additional proofs to present, the Branch will make an effort to expedite the conference with an opportunity for the taxpayer to be heard. Decisions in these types of situations are typically issued within days of the conference. These procedures are intended to reduce the wait times for taxpayers and to allow conferees to focus on cases with more complex legal, auditing, and accounting issues.

My Protest Has Been Acknowledged; When Will I Have My Conference?

Scheduling

Conferences are scheduled in the order that they are received. Periodic changes in the volume of requests received make it difficult to estimate when your conference will be scheduled. You will be notified regarding the date and time for your conference as the work schedule allows.

After the case has been assigned, you will be contacted by letter regarding the scheduling of the date and time for your conference. Every attempt will be made to schedule a date that is mutually convenient for both you and the conferee.

Location

In-person conferences are held in the Division's offices at:

Division of Taxation
Conference & Appeals Branch
3444 Quakerbridge Road
Quakerbridge Plaza Office Complex
Bldg 5, Floor 3rd
Mercerville NJ 08619

Directions are provided with the scheduling letter.

Telephone Conferences

As a convenience for taxpayers, conferences may be held by telephone rather than in person. Telephone conferences will be scheduled in the same manner as in-person conferences.

Cancellations

Due to the extent of our case load and our commitment to the expeditious and fair treatment of all taxpayers, we require that requests for rescheduling be made in writing no less than five days prior to the date of the scheduled conference. A cancellation will be considered only in the case of emergency or hardship, and the date and time will be set at the conferee's convenience.

Failure to Attend Your Conference

If you do not comply with the above policy and you or your authorized representative do not appear for the conference on the scheduled date, the conference will not be rescheduled. The conferee will issue a Final Determination based on the data in your file including the written basis for the protest submitted when re-questing the conference.

What Is Surety and How Does It Relate to My Protest?

Surety

N.J.S.A. 18:32-1.1, provides the authority for the review of incoming protests for risk regarding the taxpayer's ability to pay the assessment at issue. Security is required if the liability under protest consists in whole or in part of arbitrary or estimated assessments and also may be required for those cases in which the liability is \$10,000 or greater. The surety review involves an examination of the taxpayer's compliance history and information contained in both the case file and the taxpayer's protest. If risk of taxpayer's failure or inability to pay the liability is established, you will receive a letter requesting surety and explaining the process. Surety may be posted in the form of an "escrow" payment of the amount assessed plus updated interest, or by providing a letter of credit or a surety bond. If you are unable to provide these types of surety, the Division will then proceed with the process of filing a judgment in the Superior Court of New Jersey to protect its interests. Usually no further collection actions such as levies seizures are pursued at this point. *Note: see NJ CAB Procedures: Surety Process

Surety Process After the Final Determination

If the finally determined assessment is paid, a warrant of satisfaction is filed clearing the judgment, if any, or releasing any amount that may have been posted over and above the final assessment. If a judgment was filed in lieu of surety and the taxpayer cannot pay the amount due, the case is ultimately forwarded to the Division's Compliance Activity for collection action. In certain circumstances, payment plans may be requested and implemented through the Compliance area.

What Documentation Do I Need to Prepare for the Conference?

Preparation

You should be prepared to submit documentation that supports or validates your contentions prior to the scheduled date of your conference meeting. In some cases, additional information may be requested by the conferee. Specific information will depend on the issues of your individual protest. Some examples of commonly requested documentation include: business and personal tax returns (both State and Federal), purchase and sales journals and related receipts, bank ledgers and statements, cash register tapes, payroll records, sales tax exemption certificates (ST-3, ST-5, UEZ, etc.), affidavits, minutes of corporate meetings, contracts, and corporate charters. For responsible officer issues, all information related to the extent of your duties with the business and dates of association with that business will be required. Verification of your documentation will be requested. Protests of Jeopardy Assessments will require many of the business records stated above including the dates and description of your activities within this State. Documentation will be requested regarding tax returns filed with other states and the Federal Government.

Taxpayers and representatives are strongly encouraged to electronically summarize any additional information/documentation they are submitting onto a cd-rom, disk, etc. and submit it along with the information/documentation. The electronic compilation should be in a format consistent with the auditor's work papers. Providing this in electronic format will greatly assist the conferee and the taxpayer alike in that it will reduce the amount of time required to review the information and to form a final determination.

What Can I Expect at My Conference?

Conference

You and your representative, if you have one, will meet with the conferee at the scheduled date and time and informally discuss the issues which you are protesting. This can be an in-person meeting or by telephone. You should have provided all your documentation to the conferee for review prior to the conference. The conferee may ask some additional questions based on the information you have submitted and may request that additional information be submitted before a determination can be made. If the additional information is not submitted within the requested time frame, a Final Determination will be prepared based on the information available at that time. The conference is intended to conclude the administrative appeal process, not to commence the process.

Tape Recording

Although it is not normal procedure, you do have the right to record your conference. If you wish to record the conference, you must notify the Division 14 days prior to the scheduled date and use your own recording equipment.

The Division does not usually record conferences with taxpayers, but is permitted by statute to do so. The Division may take testimony and may make recordings of testimony with taxpayers. The Division shall notify you of its intent to record a conference or take testimony 14 days prior to the scheduled date. If the Division records a conference between a Division employee and a taxpayer, the taxpayer may obtain a copy of the recording at a cost of \$10 per copy.

What Happens After I Have My Conference?

Final Determination

The protest process results in the issuance of a Final Determination after the conferee reviews all the information, applicable statutes, and regulations. The Final Determination is sent by certified mail to both the taxpayer and the representative identified on the Power of Attorney form filed by the taxpayer. Once the Final Determination has been issued and any posted surety is reconciled, the conference process is complete.

What Happens if I Don't Agree With the Final Determination?

Tax Court

The taxpayer may appeal the Final Determination by filing a complaint with the Tax Court of New Jersey within 90 days from the date of the Final Determination. Instructions for appeal are included in the Final Determination letter. The address of the Tax Court is:

Tax Court Management Office
P.O. Box 972
25 Market Street
Trenton, New Jersey 08625-0972
Phone: 609-292-5082 or 609-292-6989

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.

We are here to help

Conference and Appeals exists to make every possible attempt to resolve protests between the Division and taxpayers in accordance with the appropriate statutes and regulations.

For more information

By Phone –
609-588-7175

By Fax –
609-631-7000

Online –
Visit our Web site at:
www.state.nj.us/treasury/taxation/organization/confappl.htm

To email us, go online to –
www.state.nj.us/treasury/taxation/contactus_tytcab.html



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