

New Jersey Division of Taxation

Protest and Conference Guidebook



Office of Counsel Services
Conference and Appeals Branch

October 2017

Submitting a Protest and Preparing for a Conference

This guidebook provides answers to frequently asked questions about the filing of protests in response to certain determinations issued by the Director of the Division of Taxation. Information also is included regarding how to prepare for, and what to expect during the conference process.

What Is a Protest?

A protest is a written explanation of the reasons why you disagree with certain assessments or findings made by the Director of the Division of Taxation or his appointed representative. Your protest must be filed according to the New Jersey Administrative Code [N.J.A.C. 18:32-1.1](#) et seq. See "[What Must I Include in a Protest?](#)" If you want an informal conference, you must include your request for one in your protest.

A protest is different from an appeal. An appeal is made by filing a complaint with the Tax Court of New Jersey. Taxpayers usually file a protest with the Division's Conference and Appeals Branch (CAB), and then, if they disagree with CAB's decision, they file a complaint with the Tax Court.

Conference and Appeals Branch

The Conference and Appeals Branch (CAB) in the Office of Counsel Services in the Division of Taxation is the branch that reviews taxpayer protests and tries to resolve them in accordance with applicable statutes and regulations. A taxpayer is not required to have outside representation (e.g., attorney or accountant) for the conference; but taxpayers have the right to obtain such representation. In order to comply with the strict provisions of confidentiality, Division personnel will not discuss any aspect of a case with a representative unless the taxpayer submits a properly completed [Appointment of Taxpayer Representative, Form M-5008-R](#).

What is a Conference?

A conference or hearing is an informal meeting or discussion with a conferee. Conferences may be held in-person or by phone. The conferee will review all of the available documentation and other evidence in order to establish the facts concerning the protested issue(s) and come to a conclusion that is supported by the relevant statutes, regulations, and case law. When the review is concluded, the conferee will issue a written Final Determination.

What Are Examples of Notices That I Can Protest?

You can protest notices and determinations that the Division issues and which include information about your appeal rights. Examples of notices that can be protested include:

- Notice of Assessment Related to Final Audit Determination;
- Notice and Demand for Payment of Tax (only if related to a delinquency);
- 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;
- Refund Denials;
- Notice of Denial of EITC Eligibility;
- Property Tax Reimbursement Denial Letter;
- Notification of Finding of Nexus.

Notices That You Cannot Protest

If the Division issues a notice without including information about appeal rights, it usually means that the notice cannot be protested. This includes notices that the Division sends when you file a return but you do not pay the entire amount that you reported as due. In such a case, the assessment has been self-assessed so you cannot protest the resulting notice for nonpayment.

An example of another notice that you cannot protest is the Statement of Account. This is the first notice that the Division sends to taxpayers 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 to you.

Examples of other things that you cannot protest include: a post-audit conference report (you must wait for the Assessment Related to Final Audit Determination), notification of a proposed determination, a Surety Request letter, and a Notice and Demand that the Division issued for an audit assessment that was not protested.

If you submit a protest for a notice that cannot be appealed, CAB will send you a written response letting you know that, advising you that no conference will be held, and explaining what you should do next.

How Long Do I Have to File My Protest?

90 Days

N.J.S.A. 54:49-18, gives you **90** calendar days from the date of the notice or determination to file a written protest with CAB. If the 90th day falls on a weekend or holiday, the next business day is deemed to be the 90th day. If the Division sends you a *Notice of Deficiency for Gross Income Tax* to your address outside of the United States, you have 150 days from the date the notice was mailed to file a protest.

Although you are not required to do so, you may want to mail your protest using a method that provides you with proof of mailing. Such methods include, but are not limited to, certified mail, registered mail, or a private delivery service such as Federal Express or United Parcel Service (UPS).

Determining if Your Protest is Timely

The New Jersey Administrative Code at N.J.A.C. 18:2-4.1 through 4.13 provides the rules the Division uses regarding various types of postmarks and to determine 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 a protest is made by the United States Postal Service, the postmark must show a date stamp that is within 90 days of the date on the notice being protested in order to be timely, *not* from the date that the taxpayer received the notice. If the Division sent the notice by certified mail, the certified mail date is considered the date of the notice (as opposed to the date on the notice) and is the date used to determine the 90-day period. If the date stamp is not within 90 days of the date of the notice, it will be deemed late no matter when the taxpayer mailed the envelope or wrapper. N.J.A.C. 18:2-4.5.

Example: On June 8, 2017, the taxpayer received a notice from the Division that was dated June 3, 2017, and sent by certified mail on that date. The taxpayer filed a protest on September 1, 2017, which the Division received on September 6, 2017. The U.S. postmark on the envelope shows a date stamp of September 1, 2017, which is within 90 days of the date of the notice. Even though the Division did not receive the protest within the 90-day period, the protest is considered timely. If the date stamp had been September 2, 2017, or later, the protest would be deemed late.

Metered Mail

A protest that is stamped by a postage meter and not postmarked by the United States Postal Service is considered to have been mailed and postmarked three days before the date the Division receives it. N.J.A.C. 18:2-4.6.

Example: On June 8, 2017, the taxpayer received a notice from the Division that was dated June 3, 2017, and sent by certified mail on that date. The taxpayer filed a protest in an envelope showing a metered date of September 1, 2017, which the Division received on September 6, 2017. 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, 2017.

Express Delivery

A protest that is delivered by Federal Express, United Parcel Service, or other similar service, is considered to have been mailed and postmarked one day before the date the Division receives it.

Example: On June 8, 2017, the taxpayer received a notice from the Division that was dated June 3, 2017, and sent by certified mail on that date. The taxpayer sent a protest by Express Mail on September 1, 2017, which the Division

received on September 2, 2017. Even though September 2 was the 91st day, the protest is considered timely filed because it is considered to have been mailed and postmarked one day prior, which was filed the 90th day.

Foreign Postmark

If the envelope or wrapper containing a protest is mailed from a foreign country and received by the Division, the date of the official postmark on the envelope or wrapper is considered to be the date of filing. The envelope or wrapper must be properly addressed, have sufficient postage prepaid, and the postmark must show a date stamp by the foreign country's official postal service which is within 90 days of the date on the notice being protested. N.J.A.C. 18:2-4.11

Multiple Postmarks

If the envelope or wrapper containing a protest has a postmark made by the United States Postal Service in addition to other postmark types, such as metered mail, the postmark made by the United States Postal Service will be used to determine the filing date of the protest. N.J.A.C. 18:2-4.7

Illegible and Absent Postmarks

If the envelope or wrapper containing a protest shows sufficient prepaid United States postage but the postmark is illegible or missing, the protest is considered to have been mailed and postmarked three days before the date the Division receives it. N.J.A.C. 18:2-4.8

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 that you have the right to appeal to Tax Court on the issue of timeliness.

What Must I Include in a Protest?

The New Jersey Administrative Code at N.J.A.C. 18:32-1.1 et seq., defines a proper protest. To properly submit a protest, you must include **all of the following**:

- The signature of the taxpayer, the taxpayer's duly authorized officer, or duly authorized representative;
- The taxpayer's name, address, telephone number, 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, properly completed [Appointment of Taxpayer Representative, Form M-5008-R](#) must 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 that is under protest, and the specific amount of tax, penalty, and/or interest that is uncontested;
- A statement of the grounds on 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 you are unable to submit the evidence and/or the documentation requirement cannot be met within the 90-day period, the Division will, upon written request, extend the time for 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 may take action to collect any unprotected amounts that are due.

Where Do I Send My Protest?

By Mail

Mail your protest and request for informal conference to:

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

If, however, your notice indicates that you should mail your protest to a different PO Box, you should use the box number indicated in your notice. Some of these may be:

- Jeopardy Assessments: PO Box 245; or
- Certain Nexus protests: PO Box 264; or
- Responsible Person protests: PO Box 285.

By Fax

Fax your protest and request for informal conference to 609-631-7000. If you fax your protest, you also should send a hard copy.

By Express or Hand-Delivery

Send your protest and request for informal conference to:

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

I Sent You My Protest; What Happens Next?

Initial Review of Your Protest

Once CAB receives your protest, the Review Group will review it to ensure that you have submitted a proper protest by including all necessary items. See *"What Must I Include in a Protest?"* above. If the protest is

properly prepared, CAB will send you (or your representative) an acknowledgment letter. If the protest is not properly prepared, CAB will send you (or your representative) a letter requesting that you provide the missing information.

In-Depth Review of Your Protest

Depending on the subject matter and complexity of your protest, the Review Group may review the protest with the appropriate Supervisor to determine if more information is required. This helps both the taxpayer and the conferee that will be assigned to the case to be better prepared for the conference.

Expedited Conferences

If your protest is complete and involves a single issue or can be easily resolved, the Review Group will review the protest with the appropriate Supervisor to determine whether the conference can be expedited. Once expedited, your protest will be assigned to a conferee who will contact you (or your representative) to discuss your protest and to schedule a conference, if you still require one. If you no longer require conference, the conferee will issue the Final Determination.

My Protest Was Acknowledged; When Will I Have My Conference?

Scheduling

Once your protest has been assigned to a conferee, you will be contacted to schedule your conference. The conferee makes every effort to schedule the conference at a time that is convenient for all involved. Because the volume of protests we receive is always changing, it is difficult to estimate when your conference will be scheduled.

Location

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

3444 Quakerbridge Road
Quakerbridge Plaza Office Complex Building 9, 3rd Floor
Mercerville, NJ 08619

Directions to our office will be provided with the scheduling letter.

Telephone Conferences

Conferences may be held by telephone rather than in person and are scheduled in the same manner as in-person conferences.

Reschedule/Cancellation

We realize that things happen and sometimes it is necessary to cancel or reschedule your conference. Requests for cancellation should be limited to situations in which failure to attend is unavoidable.

Failure to Attend Your Conference

If you do not ask us to reschedule your conference and you or your authorized representative do not appear for the conference at the scheduled date and time, the conference will not be rescheduled. The conferee will issue a Final Determination based on the information in your file.

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

Surety

N.J.S.A. 54:49-2 allows the Director of the Division of Taxation to require a taxpayer to provide a bond or other security if the Director determines that the collection of any outstanding State taxes, interest, and penalties may be prejudiced. If the contested assessment is \$10,000 or more, security is not required unless the Division determines that there is a substantial risk that the taxpayer will fail to pay, or is unable to pay, based on the taxpayer's compliance history and financial condition. If the contested assessment is less than \$10,000, no security may be required unless the assessment is arbitrary or estimated pursuant to N.J.S.A. 54:49-5 or 7.

To determine whether you are required to provide security, CAB will review your compliance history and the information contained in both your case file and your protest. If it appears that there is a substantial risk that you are unable or unlikely to pay the liability, CAB will send you a letter requesting surety and explaining the process.

Surety may be provided in the form of an escrow payment equal to the amount you are protesting plus updated interest. In the alternative, you may provide a letter of credit or a surety bond. If you are unable to provide these types of surety, the Division will file a judgment in the Superior Court of New Jersey to protect its interests. Generally, the Division will not take any further collection actions, such as levies or seizures, at this point. Note: see NJ CAB Procedures: Surety Process.

Surety Process After Final Determination

If, after CAB completes the conference process, and issues a Final Determination that upholds all or part of the protested assessment, the Division will issue a Warrant of Satisfaction clearing the judgment, if any, or releasing any amount of surety you may have posted in excess of the amount of the Final Determination. If the Division filed a judgment in lieu of surety and you cannot pay the amount due, your case will be forwarded to the Division's Collections and Enforcement Activity for collection. In certain circumstances, you may be eligible for a deferred payment plan.

What Documentation Do I Need to Prepare for the Conference?

Preparation

You should submit documentation that supports or validates your contentions before the scheduled date of your conference. In some cases, the conferee assigned to your case may request additional information depending on the issues of your individual protest. Some examples of commonly requested information 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, UZ-2, etc.), affidavits, minutes of corporate meetings, contracts, and corporate charters. If you are protesting a finding that you are a responsible person, information related to the extent of your duties with the business and dates of association with that business 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 submit any additional information or documentation electronically in advance of their conference and to provide an electronic summary with their submission. The format of the summary should be consistent with the auditor's work papers. Providing this in electronic format may reduce the amount of time the conferee needs to review the information and to issue a Final Determination.

What Can I Expect at My Conference?

You, and your representative if you have one, will meet with the conferee at the scheduled date and time to 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 additional questions based on the information you have submitted and may request that you submit additional information before a determination can be made. If you do not submit the additional information within the specified time frame, the conferee will prepare a Final Determination based on the information available. The conference is intended to be the end of the administrative appeal process, not the beginning of the process.

Recording Conferences

You have the right to record your conference. If you wish to do so, you must notify the conferee 14 days prior to the scheduled date and use your own recording equipment.

The Division is authorized by statute to record a conference with a taxpayer. The conferee will notify you 14 days before the scheduled date of your conference if he or she intends to record your conference. If the Division records your conference, you may obtain a copy of the recording at a cost of \$10 per copy.

What Happens After I Have My Conference?

Final Determination

After your conference, the conferee will review all the information, applicable statutes, and regulations and then issue a Final Determination. The Final Determination is sent by certified mail to both you and your representative you appointed to represent you, if any. Once the Final Determination has been issued and any posted surety is reconciled, the conference process is complete.

What if I Do not Agree With the Final Determination?

Tax Court

If you disagree with all or part of the Final Determination that CAB issues, you may file a complaint with the Tax Court of New Jersey within 90 days from the date of the Final Determination. Instructions for filing an 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.

Are There Any Alternatives to Filing a Protest?

If you do not timely protest or appeal a final audit assessment, you may pay the entire assessment and then file a [Claim for Refund of Paid Audit Assessment, Form A-1730](#). However, you must (1) pay the entire assessment within one year after the time for filing the protest expires, and (2) file Form A-1730 **with all supporting documentation** within 45 days after the time for filing the protest expires.

We are here to help

CAB 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

Phone: 609-588-7175

Fax: 609-631-7000

Online: www.state.nj.us/treasury/taxation/organization/confappl.htm

Email: https://www.state.nj.us/treas/taxation/contactus_tytcab.shtml