

NEW JERSEY ADMINISTRATIVE CODE
TITLE 18. DEPARTMENT OF TREASURY--TAXATION
CHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION
SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION

Current through September 20, 2004; 36 N.J. Reg. No. 18

18:1-1.8 Conference and Appeals Branch

(a) A Conference and Appeals Branch within the Division of Taxation exists in accordance with > N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the Director, except administrative hearings and reviews of findings of transfer inheritance and estate taxes which are conducted by the Transfer Inheritance Tax Branch. See > N.J.A.C. 18:26-12.5 through 12.10. A protest, and a request for hearing, if any, by a taxpayer to the Conference and Appeals Branch must be made within the time mandated by the appropriate taxing statute, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made pursuant to > N.J.S.A. 54:49-18 within 90 days of the giving of the notice or the action of the Director sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to > N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to > N.J.S.A. 54:51A-14 and > 54A:9-10. The 90 day period for appeals to the Tax Court cannot be relaxed.

(b) Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1. The taxpayer's name, address, telephone number and social security or tax identification number;
2. 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 filed with the notice of protest;
3. The type of tax and period(s) under protest;
4. A copy of the notice at issue;

5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested;

6. A statement of grounds upon which the protest is based. To permit the Division to consider and rule upon as many claims for reducing or vacating a finding or assessment as possible, the statement of grounds filed in support of the protest should set forth all claims and assertions which support the taxpayer's challenge to the protested assessment, including all alternative grounds which the taxpayer may assert;

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 90 day period, the Division will, upon written request, extend the time for complying with this submission for an additional 90 days); and

8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest, if any, that is due.

(c) A submission which, in particular, does not set forth the information in (b)5, 6 and 7 above will not be considered a valid protest and will not result in a hearing or review. If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held. The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.

(d) Appeals to the Conference and Appeals Branch may be made before or after payment. The filing of any protest shall not abate penalties and interest for nonpayment. For criteria for abatements of penalty and interest, see > N.J.A.C. 18:2-2.7.

1. The following concern collection of taxes while a finding or assessment is being protested to the Director:

i. In the case of an arbitrary or estimated assessment for which security is required pursuant to (d)2i below, and where such security has not been furnished to the Director, the Director may take any action permitted by statute for the purpose of collecting the tax in issue, including, without limitation, the filing of a certificate of debt or a levy on and sale of the taxpayer's property, even though the taxpayer may have protested the finding or assessment to the Director. The Director may institute collection activity at any time prior to the furnishing of the required security, whether or not the taxpayer has requested the form and amount of security that would be required to stay collection activity by the Director. The Director shall immediately stay all collection activity upon the furnishing of the security required by (d)2i or ii below.

ii. Where no security is required pursuant to (d)2ii or iii below, or where, pursuant to (d)2ii below, the Director has notified the taxpayer that such security is required and where such security actually has been furnished to the Director, the Director shall stay any action to collect the tax in issue while a finding or assessment is being protested to the Director.

iii. Any stay of collection activity provided for by this paragraph shall expire and be of no effect 90 days after the final determination of the protest is issued by the Director, except as provided pursuant to (d)3 below.

2. The following concern security for tax while a finding or assessment is being protested to the Director:

i. Security shall be required in the case of a protest to the Director of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to > N.J.S.A. 54:49-5 or > 54:49-7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii. Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer. Such security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall make a determination as to whether security is required and as to the form and amount of any such security and give notice to the taxpayer of such determination.

(1)-"Taxpayer compliance history" shall be construed to include any and all information obtained and/or maintained by the Director with respect to any State tax accounts of the taxpayer, including, but not limited to, information that the taxpayer has under reported or failed to report income.

(2) The Director may determine a taxpayer's financial condition by reference to a number of factors, including, but not limited to, the following: income/employment data of taxpayer, spouse and dependents; Federal and State filing and payment histories; fixed monthly expenses; loans payable; assets and liabilities; real estate owned and/or being purchased under contract; life insurance policies; real and personal property owned by spouse and dependents valued in excess of \$200.00; all transfers of property made in the preceding three years (including cash); status as a party to any lawsuit, trustee, executor or administrator; holders of any money on taxpayer's behalf; likelihood of receiving an inheritance; or the receipt or expectation of receipt of any benefits from any trust, compensation claim, damage claim, or contingent or future interest.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

3. The following concern collection of taxes after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. The filing of a complaint with the Tax Court shall not stay the collection of a liability consisting in whole or in part of arbitrary or estimated assessments of tax made pursuant to > N.J.S.A. 54:49-5 or > 54:49-7, unless security has been furnished to the Director pursuant to (d)4i below.

ii. Except in the case of arbitrary or estimated assessments made pursuant to > N.J.S.A. 54:49-5 or > 54:49-7, the Director shall stay all activity to collect the tax in issue upon the filing of a complaint with the Tax Court where no security is required pursuant to (d)4i or ii below or where, pursuant to (d)4ii below, the Director has notified the taxpayer that such security is required and such security has actually been furnished to the Director.

iii. Any stay of collection activity provided for by this paragraph shall expire and be of no effect upon the entry of a judgment by the Tax Court determining that all or any part of the tax assessed is due and owing.

4. The following concern security for tax after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. Security shall be required in the case of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to > N.J.S.A. 54:49-5 or > 54:49-7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii. Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay a liability, based on the compliance history and financial condition of the taxpayer. Such security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax in issue in the event that the finding or assessment is upheld. The Director shall make a determination as to whether security is required and as to the form and amount of any security and give notice to the taxpayer of such determination. The provisions of (d)2ii(1) and (2) above shall apply in construing the provisions of this subparagraph.

iii. No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

5. The following concern the effect of stay of collection activity:

i. Any stay of collection activity by the Director pursuant to (d)1 or 3 above shall serve to extend the time period set forth in any statute of limitations which would otherwise require the Director to collect the tax within the time specified by the statute of limitations. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

ii. A declaratory judgment action, instituted in the Tax Court by a taxpayer alleging that an assessment should not be made, shall serve to extend any statute of limitations which would otherwise bar the Director from making an assessment of the tax in issue beyond the period set forth in the limitations statute. The period of limitations shall be extended by the same number of days that the Director is required by this section to stay collection activity.

(e) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference and Appeals Branch's soonest available date. A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled conference.

(f) The taxpayer may have an attorney or accountant present at a conference. If the taxpayer intends to have an attorney and/or an accountant represent the taxpayer at a conference, the taxpayer shall complete a Power of Attorney form and the Division must receive the form, properly completed, prior to the interview. Unless otherwise instructed by the taxpayer in writing, the original final determination notice, plus any attachments, shall be mailed by certified mail to the taxpayer's last known address, with copies mailed by certified mail to the agent identified on the Power of Attorney form filed by the taxpayer.

(g) Taxpayers may record conferences with Division of Taxation employees. Taxpayers wishing to record a conference shall notify the Division within 14 days prior to the conference and the recording shall be made with the taxpayer's own equipment. The Division does not usually record conferences with taxpayers, but is permitted by statute to make such recordings. The Division make take testimony and may make recordings of testimony with taxpayers. The Division shall notify the taxpayer of its intent to record a conference or take testimony 14 days prior to the conference. 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 \$10.00 per copy.

(h) Transfer inheritance tax hearings are held pursuant to > N.J.A.C. 18:26-12.5 to 12.10 and may be scheduled by contacting the Individual Tax Audit Branch, 50 Barrack Street, PO Box 249, Trenton, NJ 08695-0249. Railroad tax hearings are held pursuant to > N.J.A.C. 18:23-11.2 and 11.3 and may be scheduled by contacting Property Administration, 50 Barrack Street, PO Box 251, Trenton, NJ 08695-0251.

(i) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference and Appeals Branch, Division of Taxation, 50 Barrack Street, PO Box 198, Trenton, NJ 08695-0198. When using a delivery service, protest documents should be delivered to the Division of Taxation, Conference and Appeals Branch, Quakerbridge Plaza, Office Compliance, Building 5, 3rd Floor, Quakerbridge Road, Mercerville, New Jersey 08619. In order to determine the timeliness of receipt, the Conference and Appeals Branch follows N.J.A.C. 18:2-4.