



Your Rights and Obligations Under the Tax Law

A major function of the Department of Taxation and Finance is to help taxpayers understand their rights and responsibilities. Taxpayer awareness of these rights is essential to maintaining the efficiency and fairness of the state and local tax systems.

New York State established a Taxpayers' Bill of Rights in Tax Law Article 41. The Tax Department assists taxpayers by providing:

- nontechnical statements that explain taxpayers' rights and the department's obligations regarding audits;
- the procedures for taxpayers to challenge department decisions, to claim refunds, and to file complaints; and
- the procedures the department may use to enforce tax liabilities (called the *collection process*).

You can get more information about your rights as a taxpayer on our website, including all publications referenced below, or by calling us (see *Need help?* at the end of this publication).

This publication provides a summary of taxpayers' rights at various stages of the tax administration process.

The New York State tax audit

We conduct audits to verify that taxpayers paid the correct amount of tax. According to New York State Tax Law, during the audit you must provide whatever records are necessary to verify the information you reported on your return. Depending on the type of return being audited, this may include 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 familiar with generally accepted accounting principles and auditing techniques.

To avoid any conflict of interest, the auditor cannot have any relationship 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 employee misconduct, contact our Office of Internal Affairs by calling 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*.

Your rights during an audit

While you must cooperate with the auditor, you should also be aware of your rights. These rights are designed to:

- protect you from unreasonable demands,

- minimize disruption of your business or personal life during the audit, and
- protect you from arbitrary actions.

Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on our right to assert additional tax due (generally, three years after your return was filed). However, a six-year statute of limitations applies to assert additional tax due when there is an abusive tax avoidance transaction, or, when a taxpayer omits 25% or more of their income from the return. A taxpayer and the department may agree in writing to extend the statute of limitations before it expires.

The statute of limitations to assert additional tax does not apply, however, for any period during which a taxpayer failed to file a return, failed to report the changes made by the Internal Revenue Service (IRS) to a federal tax return (*federal changes*), or filed a false or fraudulent return with intent to evade tax. For income, estate, and corporation tax purposes, a taxpayer is generally required to report a federal change to New York State within 90 days after the final determination of the change, correction, renegotiation, or disallowance.

For amended returns filed on or after April 12, 2018, the statute of limitations on our right to assert additional tax due, attributable to a change or correction made on such amended return, is generally one year from the date such amended return is filed (unless a longer period of time applies or unless the amended return is due to federal changes).

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

Representation during an audit

You may represent yourself, have someone accompany you, or have someone represent you during an audit. Any person representing you must have the proper written authorization (Form POA-1, *Power of Attorney*) from you to act on your behalf. For information on how to file a power of attorney, visit our website or call us (see *Need help?*). You may retain representation at any time during an audit, or suspend a meeting or interview for a reasonable period to obtain representation.

Former employees of the Department of Taxation and Finance are restricted from representing taxpayers before the department for 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 their employment.

Audio recording

You may make an audio recording of any in-person interview by providing advance written 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 written notice to you. If you request it, we will provide a transcript or copy of the recording to you, but only if you reimburse us for the cost.

The field audit

Field audits are usually scheduled 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 provide. For a business audit, most appointments will be made at your place of business, to minimize your time away from your business activities. 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 substantiates the need for extra time.

Opening conference

At your initial meeting (the *opening conference*), the auditor will:

- explain the audit approach and procedures,
- explain the audit process, and
- outline your protest rights and appeal procedures in case you disagree with an audit adjustment.

Use this meeting to ask any questions you might have regarding your rights and responsibilities.

Audit methods

We use several different audit methods to conduct audits. We may conduct:

- a detailed audit,
- an audit involving a 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 the 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 findings result in a material effect on the reporting of another tax, those findings may be referred 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.

For sales and compensating use taxes, we may estimate any additional tax due only if, in response to our request for records, you have no records, or the records that you provide are inadequate for us to determine the tax due.

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.

Field 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 during 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 there were errors made,
- a notice of additional taxes due, or
- a notice that a refund is 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 work papers.

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 *Statement of Proposed Audit Changes*, or similar document, 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 out your payments over time (see *Installment payment agreement*). You should be aware, though, that 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 *Statement of Proposed Audit Changes* 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 Deficiency* or *Notice of Determination* 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*). 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.

Although payment is not required while appealing a *Notice of Deficiency* or *Notice of Determination*, you may pay the proposed amount due, to stop the accrual of additional interest and any penalties due, if you are eventually found liable.

You may also pay any tax due and then file a claim for refund within the time period applicable to the tax involved. If we deny your claim completely or partially, you may then choose to appeal through either the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals, within the applicable statutory period.

The desk audit

A desk audit is a review of tax returns, refund requests, or other documents that you have submitted. Sometimes, a desk audit includes or is based on information obtained from other sources, such as the IRS. It may also involve a return we believe you should have filed. We will notify you if a desk audit is taking place only if we need to request more information, or if we determine that you either owe additional tax or are due a refund.

If we need more information, we will send a letter to notify you of the desk audit and request the required information. We will give you a reasonable amount of time to respond to the request. If you respond, we will review your response and inform you of our findings.

Desk 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 any additional taxes due, you will receive a *Statement of Proposed Audit Changes* or similar document, explaining the reason. We will give you a reasonable amount of time to respond. The technician will then analyze your response and, if appropriate, make any adjustments to the amount owed. If, however, the audit results in a refund, you will receive notification of your refund with a letter of explanation, unless you owe other taxes or a debt referred to the Tax Department (see *Offsets*).

If preliminary findings result in a material effect on the reporting of another tax, those findings may be referred 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.

If you agree

If you agree with the audit findings, we may ask you to sign the *Statement of Proposed Audit Changes* or similar document, and pay the amount due.

If you owe money but cannot pay in full immediately, you may be eligible for an installment payment agreement, which will allow you to spread out your payments over time (see *Installment payment agreement*). 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, you should submit more information to substantiate your disagreement, and return a copy of the *Statement of Proposed Audit Changes* to us. The technician will review any additional information you submit and, if appropriate, notify you of their determination in writing.

If you still do not agree with the audit findings, we will send you a *Notice of Deficiency* or *Notice of Determination* for the taxes due. At this point, you may appeal the audit findings through either the Bureau of Conciliation and Mediation Services, or 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*). 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 *Statement of Proposed Audit Changes*, or similar document.

Although payment is not required while appealing a *Notice of Deficiency* or *Notice of Determination*, you may pay the proposed amount due, to stop the accrual of additional interest and any penalties due if you are eventually found liable.

You may also pay any tax due, and then file a claim for refund within the time period applicable to the tax involved. If we deny your claim completely or partially, you may then choose to appeal to the Bureau of Conciliation and Mediation Services, or to the Division of Tax Appeals, within the applicable statutory period.

Claims for refund

Refunds may arise from any tax type. Most often, income tax refunds result from a taxpayer's overpayment of withholding or estimated tax, or a refundable tax credit, and the taxpayer usually claims the refund when filing an annual income tax return. We generate these refunds as part of the initial processing of the filed return.

After filing an original return, you may discover that you overlooked a credit, deduction, or exemption. For some tax types, you must file an amended return to claim the refund. For other tax types, you must submit a refund claim together with documentation substantiating the erroneous tax payment or overpayment. Refer to our website for more information.

If during the course of an audit, assessment, collection, or enforcement proceeding, we discover you overpaid tax, we must disclose that to you. However, we are not required to disclose an overpayment, pay a refund, or grant a credit if, at the time of discovery, the period was closed due to the statute of limitations.

Generally, if we do not issue your refund within a specified period of time, we must pay you interest. For example, we must add interest to the amount of your personal income tax refund, if we don't issue the refund within 45 days of the due date of your return or the date you filed, whichever is later.

We may approve a claim for refund for the amount requested, or adjust or deny it. If approved, you will receive a refund, plus any applicable interest. If adjusted, you will receive an amount lower than you requested, and an explanation of the adjustments. If we deny your claim fully or partially, we will send you a written notice to explain any protest rights you may have.

Note: If you owe other taxes or a debt to us, another state agency, the federal government, New York City, or another state, we may pay all or part of your refund to them. We will notify you of this *refund offset*. If you have any questions about a debt not owed to us, contact the other agency, the federal government, New York City, or the other state directly (see *Offsets*).

If you disagree with the adjustment or disallowance of a refund, you may submit more information to substantiate your position. If you received a *Notice of Disallowance* adjusting or disallowing the refund you claimed, you may request a conciliation conference with the Bureau of Conciliation and Mediation Services, or file a petition for a hearing with the Division of Tax Appeals, within the time indicated on the notice (see *Your right to protest an action taken by the Tax Department*). Your time to request a conciliation conference or file a petition is not extended by any further correspondence or contact with us.

While you may also request a conciliation conference or file a petition for a hearing if six months have passed since you filed a timely refund claim and you did not previously file a petition for an income or corporation tax deficiency for the same tax year, you may wish to see that we have had a chance to review all the relevant information. For income and corporation taxes, you must file the request or petition within two years from the date we mailed the *Notice of Disallowance*. Other taxes have different time frames to request a conciliation conference or petition for a hearing. For example, if we deny a claim for refund of sales taxes, you must file a request or petition within 90 days of the date we denied the claim.

There is a statute of limitations to claim refunds. For most taxes, you must file amended returns, or other claims for refund, within three years of the date the original return was due or filed, or within two years of the date you paid the tax, whichever is later.

If you did not file a return, then you must file the claim for refund within two years of the date you paid the tax.

If you file an amended return or claim for refund on an income, corporation, or sales tax return within the three-year period, the allowable refund may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim, plus the period of any extension of time for filing the return. If you file the amended return or claim within the two-year period, the allowable refund may not exceed the portion of the tax paid within the two-year period immediately preceding the claim for refund.

You may file an amended return for income, estate, or corporation tax, or file a claim for refund, beyond the periods mentioned above if the refund is attributable to a reported federal change or correction that you **must** report to New York State. You must file an amended return or a claim for refund within two years of the date that notification of the change or correction was due.

The refund claim form, return, or other method that you must use depends on the tax for which you are seeking a refund. For information on the applicable time limits within which you must make your claim for refund, and to obtain the appropriate forms, see *Need help?*.

Penalties and interest

The three most common reasons for penalties are:

- late filing,
- overdue taxes, and
- underpayment of estimated tax.

In the simplest terms, avoiding penalties and interest is a matter of filing your tax returns and paying the correct amount of taxes on time. If you are unclear about any of your tax responsibilities, use the resources described in this publication to learn more about your filing requirements.

The amount of penalties for late filing and delinquent taxes is generally based on the amount of tax that is overdue. However, there are various penalties for late filing even if you owe no tax.

Interest and any penalties continue to be added to the amount due until we receive full payment. All interest is compounded daily. For applicable interest rates, visit our website (see *Need help?*).

Your right to protest an action taken by the Tax Department

If you disagree with a final action taken by us, you may protest by filing Form CMS-1-MN, *Request for Conciliation 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. Those actions may include:

- the issuance of a tax deficiency or determination;
- the denial of a refund claim; or
- the denial or revocation of a license, registration, or exemption certificate.

You must file the request or petition within a certain period from the date the Tax Department mailed you notice of our 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 that you use **certified** or **registered** mail. For purposes of this rule, the filing date is the date the envelope containing the request or petition is postmarked by the U.S. Postal Service, or the date recorded or marked as described in Internal Revenue Code section 7502 by a designated private delivery service. Publication 55, *Designated Private Delivery Services*, lists the private delivery services approved for this purpose.

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 to appear on your behalf. For information on how to file a power of attorney, visit our website (see *Need help?*).

If the disputed amount is within certain monetary limits, you may elect to have your Division of Tax Appeals hearing held in the Small Claims Unit (see *Small claims option*). **Note:** Estate tax filers are not eligible for hearings before the Division of Tax Appeals, see *Estate tax appeal rights*.

You have no prepayment hearing rights at the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals if you owe tax, interest, or penalty due to:

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

Conciliation conference

A conciliation conference is an efficient and inexpensive way to try to resolve protests. The conference is conducted informally 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. If you do not sign the consent, a conciliation order will then be issued. 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.

You may be able to request a conciliation conference through an Online Services account with the department (refer to the notice you received for instructions, and if able, visit our website and search: *OLS* to set up an account if you do not have one) or by sending Form CMS-1-MN to the Bureau of Conciliation and Mediation Services by fax to 518-435-8554, or by mail to:

**NYS TAX DEPARTMENT
CONCILIATION & MEDIATION SERVICES
W A HARRIMAN CAMPUS
ALBANY NY 12227-0918**

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

Tax appeals hearing

To request a tax appeals hearing, you must file Form TA-100 with the Division of Tax Appeals. The petition must be in writing and must specifically indicate what actions you are protesting.

The hearing is an adversarial proceeding before an impartial administrative law judge. The hearing will be recorded stenographically. After the hearing, the administrative law judge will issue a determination that will decide the matters in dispute **unless** you or the Tax Department request a review of the decision by the Tax Appeals Tribunal. If that happens, the Tribunal will:

- review the record of 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.

Form TA-100 and the *Rules of Practice and Procedure* are available on the Division of Tax Appeals and Tax Appeals Tribunal's 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**

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 it 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 these amounts, 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*, 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.

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. You may qualify for relief from liability for tax on a joint return if:

- there is an understatement of tax because your spouse omitted income or claimed false deductions or credits;
- you are divorced, separated, or no longer living with your spouse; and
- given all the facts and circumstances, it would be unfair to hold you liable for the tax.

For more information, see:

- Publication 89, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, and
- Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, and its instructions.

Estate tax appeal rights

You may protest a *Notice of Deficiency* or the denial of an estate tax refund claim by filing Form CMS-1-MN with the Bureau of Conciliation and Mediation Services (see *Your right to protest an action taken by the Tax Department*), or by filing a petition to commence a special proceeding in the Surrogate's Court. If you wish to pursue a court action, but you elect not to file Form CMS-1-MN, or if you disagree with a *Conciliation Order*, you must file a *Notice of Petition* and a *Verified Petition* with the Surrogate's Court of the county having jurisdiction over the estate. The petition must be in writing, and must specifically indicate what actions you are protesting.

You must complete and file the petition in accordance with the applicable statute, by the date indicated on the *Notice of*

Deficiency, Notice of Disallowance, or the Conciliation Order that you received.

To obtain a petition form, contact the clerk of the local Surrogate's Court having jurisdiction over the estate. A request for petition forms and rules is not considered the filing of a petition, and does not extend the time limits for filing a petition.

If you file a *Notice of Petition* and a *Verified Petition* with the Surrogate's Court, you must file a copy at the same time with the Commissioner of Taxation and Finance. Mail to:

**NYS TAX DEPARTMENT
OFFICE OF COUNSEL
W A HARRIMAN CAMPUS
ALBANY NY 12227-0911**

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

The collection process

When your appeal rights have expired or have been exhausted, our Civil Enforcement Division begins collection proceedings. Before this begins, you will have the opportunity to pay your tax debt. In certain circumstances, you may request an installment payment agreement, which will allow you to spread out your payments.

If you are severely financially distressed, you may also decide to submit an offer in compromise. However, we will not necessarily accept the offer. We consider offers from taxpayers:

- **recently** discharged from bankruptcy,
- who are insolvent (their liabilities exceed their assets), and
- for whom collection in full would cause **undue economic hardship** such that the individual would not be able to pay reasonable living expenses.

Generally, the amount offered in compromise must reasonably reflect collection potential. For more information on offers in compromise, see Publication 220, *Offer in Compromise Program*.

Installment payment agreement

If you are financially unable to pay the full amount of your liability all at once, you may qualify for an installment payment agreement. To apply, visit our website (see *Need help?*). Under the agreement, you may pay off your total tax liability in monthly installments. We will establish a direct payment arrangement with your financial institution, under which monthly installment payments are automatically withdrawn and remitted to our processing bank.

However, this does not put a cap on the total amount you owe. Until your tax liability is satisfied, interest and any penalties will continue to accrue on any unpaid balance.

To qualify for an installment payment agreement, you may need to complete Form DTF-5, *Statement of Financial Condition*, and supply other information to substantiate your present financial condition and your inability to make full payment. You must also file your returns and pay all future taxes as they become due. If you do not pay your new tax liabilities or file returns on time, you will be in default under the agreement. After we give you notice of your default, we may then resume collection action on the liability under the payment agreement, or we may modify or terminate the agreement.

We will apply any payments, refunds, or other monies owed to you against the tax liability you are paying in installments. Any monies so applied will reduce the repayment term of your installment payment agreement, but you are still required to pay

the monthly amount agreed upon until your debt is paid in full (see *Offsets*).

We may terminate an installment payment agreement at any time without notice if we believe collection of the tax is in jeopardy. Otherwise, we may terminate or modify an installment payment agreement only upon at least 30 days prior notice, explaining the reason, in any of the following situations:

- We find that the information you supplied before entering into the agreement is inaccurate or incomplete.
- Your financial condition changes significantly.
- You fail to pay an installment payment or any other tax liability when due.
- You fail to file future returns on time.
- You fail to supply updated information on your financial condition when requested.

If we terminate the agreement, we may then resume collection action on the liability.

Whether or not you enter into a payment agreement, we may also file a tax warrant with the appropriate county clerk and the New York State Department of State, to ensure our priority over your subsequent creditors (see *Tax warrant*).

If you do not satisfy your full tax liability or comply with the terms of an installment payment agreement, or if we rescind or reject an offer in compromise, we may use any or all of the following activities to collect your tax liability.

Tax warrant

We can file a tax warrant against you. A *tax warrant* is equivalent to a civil judgment against you. It is a public record on file with the appropriate New York State county clerk's office and with the New York State Department of State. Warrant information is posted on the Department of State's website.

A filed tax warrant creates a lien against your real and personal property, which may affect your ability to obtain credit or buy or sell property, and allows us to seize and sell your real and personal property, or garnish your wages or other income.

Levy

A *levy* is a legal seizure of your property. In most cases, before a levy is served, we will send you a Form DTF-978, *Notice to Judgment Debtor or Obligor*, that provides a list of property that may be exempt from collection actions. Most frequently, a levy is made on bank accounts, and requires a bank to remove money from your account and send it to us. A levy can also be made on money that any third party owes you, such as a loan or rent owed to you. If you are a business taxpayer, a levy can attach to any cash on hand, or to business assets, such as machines and equipment.

Income executions

An *income execution* is a type of levy that may be issued against your wages. We will ask you to voluntarily pay up to 10% of your gross wages each time you are paid. If you don't make voluntary payments, we will have your employer automatically deduct up to 10% of your gross wages out of your paycheck and send it to us. The income execution remains in effect until the outstanding tax liability is satisfied.

Seizures and sales

We may seize and sell your non-exempt real or personal property at auction.

During a business seizure, collection agents may have the locks changed at your place of business, denying you access to your place of business and your business assets. Alternatively,

agents may remove all of the merchandise at your business, or seize your business assets and store them elsewhere until the assets are sold at auction.

If we seize your property, we will notify you of the date, time, and place of the auction. At any time before the auction begins, we will release the property and return it to you if you pay in full; or make satisfactory arrangements to pay the tax, penalty, and interest owed, along with the expenses we incurred in the seizure and the preparation for the auction.

You have the right to request that any seized property be sold within 60 days of the request, or within some longer specified period. We will honor your request, unless it is in the state's best interest to retain the property for a longer period, in which case we will notify you.

We will sell your property in accordance with the New York Civil Practice Law and Rules.

Once your assets are sold, we will send you an accounting of the disbursement of the auction proceeds. If the proceeds exceed your debt and our expenses, we will return the surplus to you.

Release of levy

We will release a levy on all or part of your property, and send notice of the release, if:

- you file a bankruptcy petition;
- you pay the underlying liability, or it becomes unenforceable by lapse of time;
- releasing the levy will facilitate collection of the liability;
- you enter into an installment payment agreement that specifically provides for release of the levy;
- the fair market value of the seized property exceeds your tax liability, and release of part of the property can be made without hindering collection of your liability; or
- if you are an individual, we determine that the levy is creating an economic hardship due to your financial condition.

If we seize property essential to your trade or business, we will determine whether the property can be released on the grounds stated above. If we release the levy on your property, we are not prohibited from future levy of the property if needed to collect your tax liability.

If property is wrongfully levied on, we may return the property seized, money equal to its fair market value, or the amount of money seized, with interest, if applicable.

Offsets

Any payment the state may owe you for goods or services you sold or provided to any state agency or instrumentality may be withheld and applied against any tax liability you owe to the state. If any payment due to you is the subject of this kind of offset, we will send you prior written notice.

In addition, under certain circumstances, any New York State tax refund or other payment due to you may be offset to pay your New York State tax liabilities, or it may be sent to another state agency, the federal government, New York City, or another state to which you owe money or taxes. The other state agency, the federal government, New York City, or the other state will send you prior written notice and then apply your refund to your debt.

If you have a past due legally enforceable New York State, New York City, or Yonkers income tax debt, it will be referred to the federal government or any state participating in the Multi-State Offset Program. Your federal income tax refund or other state refund may be applied to your New York State tax debt, up to the amount you owe.

Refund of nonobligated spouse

If you file a joint income tax return and expect to receive a refund, we may use the refund to pay your spouse's tax debts or other debts owed to a New York State agency. If you do not wish your portion of the refund to be used to pay your spouse's debts, complete Form IT-280, *Nonobligated Spouse Allocation*, and do one of the following:

- Include the form with your income tax return.
- File the form within ten days of the notice from us that the refund will be used to offset other debts.

Form IT-280 does not allow you to disclaim your spouse's debts to the federal government, or tax debts owed to another state.

Driver's license suspension for nonpayment of taxes

Your New York State driver's license is eligible for suspension by the Department of Motor Vehicles (DMV) if you have a past-due fixed and final New York State tax liability of at least \$10,000.

Before your driver's license is suspended, we will send you a notice stating you have 60 days to pay the debt in full, make satisfactory payment arrangements, or protest the proposed suspension only on any of the following grounds:

- You are not the taxpayer named in the notice.
- Your past-due tax liability has been paid in full.
- Your wages are being garnished for payment of the past-due tax liabilities at issue, or for past-due child support or combined child and spousal support arrears.
- Your driver's license is a commercial driver's license.
- You receive public assistance or supplemental security income.
- You demonstrate the suspension of your driver's license will cause undue economic hardship.
- We incorrectly found that you failed to comply with the terms of a payment arrangement more than once within a 12-month period.

You may also try to establish that you are eligible for innocent spouse relief (see Publication 89, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*), or that enforcement of the underlying liabilities have been stayed by the filing of a bankruptcy petition (call the department's Bankruptcy Unit at 518-457-3160).

If you fail to respond to the notice, we will refer your case to DMV for the suspension of your driver's license. Before the actual suspension occurs, DMV will issue a final letter stating you have 15 calendar days to resolve your tax liabilities with the Tax Department. For information on obtaining a restricted use driver's license, visit the DMV website at www.dmv.ny.gov.

Responsible person assessments

For taxes such as sales and use taxes, withholding tax, and motor fuel excise tax, responsible persons of a business may be held personally liable for the business's unpaid New York State tax liabilities. You may be considered a responsible person if you are an officer, director, or employee of a corporation or dissolved corporation, or employee of a partnership or sole proprietorship who was under a duty to act for the business to comply with the relevant provisions of the Tax Law. To be liable for withholding tax, a responsible person must also have acted willfully in failing to collect or pay over the tax.

Factors we consider in determining whether you are a responsible person include whether you:

- are actively involved in operating the business on a regular basis;

- are involved in deciding which financial obligations are paid;
- are involved in personnel activity (such as hiring or firing employees);
- have check signing authority;
- prepare tax returns;
- have authority over business decisions;
- are a tax manager or general manager; or
- are a corporate officer.

Under certain circumstances, you may be issued a responsible person assessment even if you are not under a duty to act for the business. For example, for sales and use taxes, we may issue a responsible person assessment against you if you are a member of a partnership or limited liability company, whether or not you have a duty to act on behalf of the partnership or limited liability company.

If we issue a responsible person assessment against you and you do not agree with it, you generally have 90 days to appeal, by either requesting a conciliation conference, or petitioning for a Division of Tax Appeals hearing. The appeal entitles you to a hearing to present any information you may have to refute the assessment and your liability as a responsible person. We will include a full explanation of your rights to protest an assessment with your original assessment document. For sales and use taxes only, you will be considered to have appealed if your business requests a conciliation conference, or petitions for a tax appeals hearing for the same tax liability. However, if you are not certain that the business has appealed on time, and you wish to appeal the assessment, you should request your own conciliation conference or petition for a tax appeals hearing.

Once a responsible person assessment is final, we can use all collection methods available against your assets. We may collect from you the full amount of the liability the business owes, even if there are other entities or persons involved who may be similarly assessed. Responsible person tax debts are not dischargeable in bankruptcy.

Estate tax liability of executors and transferees

If you are the executor or administrator of an estate and you distribute assets to a beneficiary of the estate, or pay any debt owed by the estate before paying the New York estate tax, you may be held personally liable for the unpaid estate tax. You will continue to be liable until either the estate tax is paid in full or the department authorizes a release of estate tax lien. In addition, if you received property from the estate as a beneficiary, you may be held personally liable for the unpaid estate tax up to the value of the property you received. However, this does not include property jointly held by the decedent and surviving spouse.

Trust accounts

If you are a business owing sales and use taxes or withholding taxes, you may need to establish a trust or segregated account with a financial institution, for depositing taxes as you collect them from customers, or withhold them from employees' wages. The trust account ensures that the taxes owed are available when the tax returns are due.

We will require you to set up a trust account when your past performance indicates chronic tax delinquencies.

Revocation or suspension of *Certificate of Authority* or refusal to issue a *Certificate of Authority*

We may revoke or suspend your *Certificate of Authority* to collect sales and use taxes for willful failure to comply with certain requirements of the Tax Law, such as willfully failing to file a return or to pay tax. If your *Certificate of Authority* is revoked or suspended, you will be prohibited from engaging in any business

in New York State for which a *Certificate of Authority* is required. If you try to remain in business with a revoked or a suspended certificate, or start a new business without a required certificate, we may impose civil and criminal penalties. We may also refuse to issue a *Certificate of Authority* for prior noncompliance with the Tax Law.

If we begin a *Certificate of Authority* revocation or suspension proceeding, or refuse to issue a *Certificate of Authority*, we will notify you of your rights during each step of the process, including your right to protest. We may stop the process at any time if circumstances warrant it, such as if you satisfy your liability.

Representation during a collection activity

You may represent yourself, or designate another person to represent you. Any person representing you must have the proper written authorization (a power of attorney) from you to act on your behalf. For more information on how to file a power of attorney, visit our website or call us (see *Need help?*).

Licenses and collateral

If you do not pay your taxes, we or another government agency may cancel or suspend your license or other certificate to engage in business. Any bond or other collateral you may have posted for a license may be liquidated and applied to your tax debt. If a bond is canceled, you must obtain a new bond before you can resume the business activities for which a bond is required.

Resolving a problem or filing a complaint

If you have a problem with the Tax Department that you have not been able to resolve through normal channels, or if for any reason you have a complaint about the department, visit our website or call us (see *Need help?*).

Depending upon the nature of your complaint, our representatives will either assist you in resolving the matter or refer your complaint for further review.

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

Text Telephone (TTY) or TDD equipment users Dial 7-1-1 for the New York Relay Service