

Welcome to the audit process and protest section. I'm Francis Leo with the New York State tax department. Today we will be covering professional audit standards, the taxpayers rights during an audit, the statute of limitations, privacy and confidentiality, representation during an audit, difference between desk audits and field audits, the appeals process, what to do if you disagree with the audit findings, and I'll also introduce you to the office of the Taxpayer Rights Advocate.

The major function of the Department of Tax and Finance is to help taxpayers understand their rights and responsibilities at each step in the administration and collection of New York state and local taxes. 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 taxpayer's bill of rights in tax law article 41. The tax department assists taxpayers in understanding their rights and responsibilities by providing nontechnical statements that explain the taxpayer's rights and the department's obligations in respect to audits and procedures for taxpayers to seek review of adverse decisions of the department, claim refunds and file complaints. You can get more information about these topics from our website.

The New York State tax audit. You may be asking yourself what exactly is an audit? Well it could be as simple as the review of one line of the return or an examination of an entire tax return. The Department conducts audits to verify that the correct amount of tax was paid and the taxpayer must provide whatever records are necessary to verify the information provided on their tax return. This may entail review of their income, receipts, expenses, deductions and credits. Audits are conducted in accordance with professional auditing standards by an auditor or a technician who is familiar with the generally accepted accounting procedures and auditing techniques. Throughout the course of the audit, the taxpayer is entitled to receive fair, courteous and professional treatment. Taxpayers are obligated to cooperate with the tax department but they should also be aware of their rights. These rights are designed to protect the taxpayer from unreasonable demands and to minimize disruption of a taxpayers business or personal life during the course of the audit. If at any time during the course of the audit the taxpayer feels these standards or rights are being violated, they should contact the auditor's supervisor.

New York State tax law generally places a three year statute of limitations on a right to assert additional tax due. Generally this is three years from the due date of the return. A six year statute of limitations applies to abusive tax avoidance transactions. A tax avoidance transaction means a plan or arrangement devised for the principal purpose for avoiding tax. If the statute is set to expire and the audit is not complete, the auditor will send the taxpayer a form, AU1 Consent to Extend the Statute of Limitations. This is also known as a waiver, which a taxpayer will need to sign and return to the auditor.

A statute of limitations does not apply for any period during which a taxpayer failed to file a return, failure to report changes made by the IRS to their federal return or filed a false or fraudulent return to evade tax.

The taxpayer has a right to know why the department's requesting certain information, how the information is going to be used and the consequences if they do not submit the information. The tax law prohibits the disclosure of information obtained from a tax return during an audit to any unauthorized

person. The tax law does however permit the department to share this information with the IRS and other governmental agencies.

During an audit, a taxpayer may either represent themselves, have someone accompany them, or have someone represent them. Any person representing a taxpayer must have a POA-1, Power of Attorney form from the taxpayer authorizing them to act on the taxpayer's behalf. Representation can be obtained at any time during the course of the audit. Now at the audit and informal appeal level, anyone can represent the taxpayer. Over at the formal appeal level, one who is not a licensed attorney or practicing CPA must get permission to represent the taxpayer.

A desk audit is review of the tax returns, including credits and deductions, refund requests, itemized deductions and exemptions. It may also involve a return a taxpayer believes that should have been filed but they have no record of receiving. The audit may include or be based on information obtained from the Internal Revenue Service or other sources.

Desk audits take place solely within the tax department. They rarely involve face to face contact between the taxpayer and the technician at the audit level. Taxpayers are not routinely notified that a tax audit is even taking place. They are notified only if a technician finds it necessary to request additional information. If additional information is needed, the technician will contact the taxpayer advising them of specific information required. If no changes are found, a letter will be sent to the taxpayer. If additional taxes are due, a statement of proposed audit changes is issued. The technician will analyze any additional information submitted by the taxpayer, and if applicable, issue a revised statement of audit changes.

If the audit results in a refund, the taxpayer will receive a refund unless the taxpayer has an outstanding tax liability or has the debt referred to the tax department but he will receive a letter of explanation regardless.

Now if selected for a field audit, the auditor will contact the taxpayer by letter to notify the taxpayer of the audit, to set up the initial appointment date, and describe the documentation that will need to be made available. Now it's scheduled in advance to give the taxpayer reasonable amount of time to respond. And the taxpayer will then receive a letter confirming the appointment time and location.

When a field audit begins, it starts with an opening conference. The auditor will sit down with the taxpayer and explain the audit reproach and the procedures, the audit process, and outline the taxpayers protest rights and appeal procedures. The taxpayer or representative, at this time, should use this meeting to ask any questions that they may have regarding the taxpayer's rights and responsibilities. Now the duration of the audit usually depends on the complexity of the issues being audited and the completeness and accuracy of the taxpayer's records. An audit can usually cover up to a three year period. If the auditor recommends no changes, a letter will be sent to the taxpayer acknowledging this. If the auditor does make changes, the taxpayer receives copies of the audit work papers and schedules detailing the changes. The auditor will explain the audit findings, methods and procedures in nontechnical terms and the taxpayer will be given a reasonable amount of time to agree, disagree or to provide additional documentation. If additional documentation is provided, the auditor

will analyze this information and if applicable, issue a statement of proposed audit changes. For both desk and field audits, if the taxpayer agrees with the findings, they should sign a statement of proposed audit changes and remit payment. If the taxpayer cannot remit payment in full, he may be eligible for a deferred payment arrangement but note that the penalties and interest would continue to accrue until the balance is fully paid.

Ok so for desk and field audits, if the taxpayer disagrees, additional information substantiate the changes can be provided for the auditor or technicians review. After the review and the taxpayer still disagrees with the audit findings, the department sends a notice of deficiency for the taxes due. At this point, the taxpayer may formally appeal the audit findings, either through our bureau of conciliation and mediation services or through the independent division of tax appeals. Now generally an appeal must be filed within 90 days of the date the notice was issued.

Part 2 is the appeals process. We're going to walk through the different legs of this flowchart that's seen on this slide and the next two slides. We've already mentioned the audit process and if a disagreed notice of deficiency is issued. Let's start with the informal appeals process, the conciliation conference. Conciliation conferences are requested by filing form CMS-1, this is a request for a conciliation conference with the Bureau of Conciliation and Mediation Services within 90 days of the date of the Notice of Deficiency, it's not sent to the audit division. This is a rapid and inexpensive way to resolve protests without a formal hearing. It's conducted informally by a conciliation conferee who will review all the evidence presented and decide whether to sustain, adjust or even cancel the assessment. So after the conference, the conferee will review the matter and send the taxpayer proposed resolution in the form of the consent. Now this may take a few weeks or a few months depending on the complexity of the issues presented. So if the taxpayer agrees, they must sign the consent and return it within 15 days and the protest will be concluded. If the consent is not returned, the conference will be deemed concluded and the conferee will then issue a conciliation order within the next 30 days. This order is binding on the taxpayer. Unless the taxpayer files a petition for a hearing with the division of tax appeals within 90 days after the conciliation order is issued. The conferee's division is binding on the tax department however.

Now the formal appeals process requires a tax appeals hearing. To request a tax appeals hearing, the taxpayer must file a petition with the division of tax appeals. The petition must be in writing and must specifically indicate what actions are being protested. The hearing is an adversary proceeding before an impartial administrative law judge, also known as an ALJ. It's set up like a small court room with a court stenographer. So after the hearing, the ALJ will issue a determination deciding the dispute. If either party disagrees, be it the department or the taxpayer, they can request a review of the decision by the tax appeals tribunal to set up the initial appointment date and describe the documentation that will need to be made available scheduled in advance to give the taxpayer reasonable amount of time to respond and the taxpayer will then receive a letter confirming the appointment time and location. But this review must be filed within four months from when the tribunal serves the taxpayer the notice of decision but the department may not appeal the decision.

There's also the small claims option. If the amount in dispute is less than \$20,000, the taxpayer may elect to the hearing held in the small claims unit of the division of tax appeals. This is held by an impartial presiding officer who conducts the hearing very informally. The presiding officer's determination is conclusive and is not subject to repeal by either the taxpayer or the department. Ok now I want to introduce you to office of the Taxpayer's Rights Advocate. Also the Taxpayer's Rights Advocate is a taxpayer's voice within the department. They provide free and independent assistance to taxpayers. They assist taxpayers whose tax problems are causing undue economic harm and they've helped taxpayers who have been unable to resolve their tax problems through regular channels. They also recommend administrative and legislative reforms. So common guidelines that are used to identify cases eligible for assistance are the following; taxpayer's made a reasonable attempt to resolve their problems through the department's established channels, or the taxpayer believes that the tax laws are being administered unfairly or incorrectly or the taxpayer's facing threat of immediate adverse action, for example, seizure of an asset that they need to stay in business, for a debt they believe is not owed or the taxpayer's experiencing or about to suffer undue economic harm, the taxpayer believes there's been an undue delay by the tax department in providing a response or resolution to their problem or their inquiry or the taxpayer believes the unique facts and circumstances of their case warrants assistance by the taxpayer rights advocate.

With respect to refund claims, the taxpayer rights advocate office cannot accept refund status inquiries for any tax year unless there's been a potential undue delay in the processing of the claim. Contact the office only if it's been over four months since the taxpayer filed the refund claim or provided additional information at the department's request and after they have inquired through department's established methods for refunds. If it has been less than four months, the taxpayer can check the refund status online. To request assistance, you complete form DTF-911, the request for assistance from the office of the Taxpayer's Rights Advocate. You can either fax it to the number above or mail it to the address listed above. To request help by phone, call 518-530-HELP. This concludes the section on audit process and protest. Thank you very much.