

CHAPTER 32

CONFERENCES AND APPEALS

Authority

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SUBCHAPTER 1. CONFERENCES AND APPEALS

18:32-1.1 Conference and Appeals Branch

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. 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.

18:32-1.2 Written protest

(a) Upon the timely filing of a protest and a request for hearing pursuant to N.J.A.C. 18:32-1.1, the hearing process shall be commenced with the submission of a written protest statement as defined by this section and a request for a hearing, if a hearing is desired. A written protest shall be signed 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 properly completed Form M-5008-R, Appointment of Taxpayer Representative 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.

(b) A submission which, in particular, does not set forth the information in (a)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 (a)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.

18:32-1.3 Security

(a) 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 (a)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 (a)2i or ii below.

ii. Where no security is required pursuant to (a)2ii or iii below, or where, pursuant to (a)2ii below, the Director has notified the taxpayer that such security is required and where such security has actually 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 (a)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 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:

- (A) Income/employment data of taxpayer;
- (B) Spouse and dependents;
- (C) Federal and State filing and payment histories;
- (D) Fixed monthly expenses;
- (E) Loans payable;
- (F) Assets and liabilities;
- (G) Real estate owned and/or being purchased under contract;
- (H) Life insurance policies;
- (I) Real and personal property owned by spouse and dependents valued in excess of \$200.00;
- (J) All transfers of property made in the preceding three years (including cash);
- (K) Status as a party to any lawsuit, trustee, executor or administrator;
- (L) Holders of any money on taxpayer's behalf;
- (M) Likelihood of receiving an inheritance; or
- (N) 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 7, unless security has been furnished to the Director pursuant to (a)4i below.