

The New York State Tax Audit - Your Rights and Responsibilities - Estate Tax

The Department of Taxation and Finance's purpose in conducting an audit is to verify that the correct tax was paid. During the audit, you may be required to provide the technician/auditor with whatever records are necessary to verify the information you provided on the estate tax return. This may entail a review of your receipts, expenses, credits, and other records of the estate.

Professional audit standards

The examination must be conducted in accordance with professional auditing standards by a technician/auditor who is familiar with generally accepted accounting procedures and auditing techniques.

To avoid even the appearance of any conflicts of interest, the technician/auditor cannot have had any personal relationships with the decedent, the decedent's family, or the executor.

Throughout the course of an audit, you are entitled to receive fair, courteous, and professional treatment. If at any time during the course of an audit you feel these standards or any other of your rights are being violated, you should immediately contact the technician's/auditor's supervisor by calling the telephone number indicated on the correspondence the Tax Department sent to you.

Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on tax audits, beyond which the Tax Department may not audit without your written consent. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report federal changes, or filed a false or fraudulent return to evade tax.

Privacy/Confidentiality

You have the right to know why certain information is being requested, how such information will be used, and the consequences of failing to submit the information. The Tax Law prohibits the disclosure of information obtained for a tax return or during the course of an audit to any unauthorized person. The Tax Law, however, does permit us to share your tax information with the Internal Revenue Service and other agencies pursuant to defined standards of secrecy and reciprocity.

Representation

You may retain representation at any time during the audit and have the right to suspend a meeting or interview at any time in order to retain such representation. Any person representing you must have the proper written authorization (power of attorney) to act on your behalf in your absence.

However, former employees of the Tax Department are subject to certain restrictions when representing taxpayers before the department.

Audio recording

Upon reasonable advance notice to the department, you are permitted to make an audio recording of any in-person interview. The recording will be made at your own expense and with your own equipment. The Tax Department also reserves the right to record any in-person interview the taxpayer has requested permission to record.

The desk audit

The desk audit is usually a review of tax returns, refund requests, or other documents that you have submitted. However, it may pertain to unfiled reports or be in response to information received from outside the department, such as the Internal Revenue Service.

If additional information is needed, you will receive a letter advising you of the desk audit and listing the specific information required. You will then be given a reasonable period of time to submit the information requested.

Audit findings

If there are additional taxes due, you will receive a *Statement of Proposed Audit Changes* explaining the reason for the additional taxes. You are then given a reasonable period of time to respond to the audit findings. If, however, the audit results in a refund, you will automatically receive your refund check and a letter of explanation.

If you agree . . .

If you agree with the audit findings, you will be asked to indicate your consent by signing the statement. If you owe money but cannot pay in full at this time, you can usually make a down payment and work out an installment payment agreement for the rest of the tax, interest, and penalty, if appropriate. 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, you should submit additional information to substantiate your disagreement and return a copy of the statement to the department. The auditor/technician will analyze any additional information submitted and, if appropriate, send you a revised document.

If you still disagree with the audit findings, you will be sent a *Notice of Deficiency* for the taxes due and given 90 days from the date on the notice to formally appeal the audit findings. 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*. Audit results can be appealed through either the Tax Department's Bureau of Conciliation and Mediation Services or by filing a petition to commence a special proceeding in the surrogate's court of the county with jurisdiction over the estate.

In some instances, a taxpayer may recover reasonable administrative or litigation costs if the department's position in a matter was not substantially justified.

Penalties and interest

The three most common reasons for tax penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. Avoiding penalties and interest is a matter of filing your tax returns and paying the correct amount of taxes on time.

Penalties for late filing and delinquent taxes are generally based on the amount of tax that is overdue. However, there are various penalties for late filing whether or not you owe any taxes.

Some penalties may be canceled for reasonable cause and lack of willful neglect, or if the penalty resulted from the department's erroneous written advice, or if the department made a mathematical error in its preparation of a return.

Whether you agree or disagree with the tax, interest and/or penalties, both interest and penalties continue to be added to the amount due until payment is received.

Claims for refund

If you file an original estate tax return and later discover that you overlooked a credit, deduction, or exemption, you can still claim a refund by filing an amended return within the statute of limitations.

If your refund is adjusted or denied in full, you will receive an explanation of the changes or a letter of disallowance. If you disagree with the adjustment of your refund, you should submit additional information to substantiate your position. If you still disagree with the adjusted refund or letter of disallowance, you may file a petition with the Bureau of Conciliation and Mediation Services or the surrogate's court to commence a special proceeding.

For information on the proper form you must use to file your request for a refund, and to obtain copies of the appropriate form, see *Need help?* on the back panel of this publication.

Notification of your right to protest an action taken by the New York State Department of Taxation and Finance

The issuance of a *Notice of Deficiency* or the formal denial of a refund claim involving estate taxes may be protested by filing a *Request for Conciliation Conference* or by filing a petition to commence a special proceeding in the surrogate's court. If you elect not to file a *Request for Conciliation Conference*, or if you disagree with a conciliation conference or with a conciliation order, you must file a *Notice of Petition* and a *Verified Petition* with the surrogate's court of the county with jurisdiction over the estate if you wish to pursue a court action.

The petition must be in writing and must specifically indicate what actions of the Department of Taxation and Finance are being protested. The petition must also be completed and filed 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.

A copy of the petition must be filed simultaneously with the Commissioner of Taxation and Finance. Please mail to:

COMMISSIONER OF TAXATION AND FINANCE
OFFICE OF COUNSEL
OFFICE OF BANKRUPTCY, ESTATE AND COLLECTION
BUILDING 9, ROOM 100
W A HARRIMAN CAMPUS
ALBANY NY 12227-0125

You may appear on your own behalf, or you may have an authorized representative to present your case for review. An authorized representative must have a power of attorney from you in order to appear on your behalf.

Conciliation conference

A conciliation conference is a rapid and inexpensive way to resolve protests without a formal hearing. The conference is conducted informally by a conciliation conferee who will review all of the evidence presented to determine a fair result. After the conference, the conferee will issue a conciliation order. This order will be binding **unless** you file a petition for a hearing within 90 days after the conciliation order is issued.

Need help?



Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

For estate tax information, call toll free 1 800 641-0004. If busy, call 1 800 225-5829.

To order forms and publications, call toll free 1 800 462-8100.

From areas outside the U.S. and outside Canada, call (518) 485-6800.

Fax-on-demand forms ordering system: Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a touch-tone phone to order by fax. A fax code is used to identify each form.

Hotline for the hearing and speech impaired: If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Internet access: www.tax.state.ny.us

Access our Web site for forms, publications, and information.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



Mailing address: If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

New York State Department of Taxation and Finance
Arthur J. Roth, Commissioner