



Instructions for Form AD-1.8

Petition for Advisory Opinion

Definition and nature of an advisory opinion

An *advisory opinion* is a written statement setting forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts relating to a tax or program administered by the Commissioner of Taxation and Finance. An advisory opinion is issued at the request of any person who is or may be subject to a tax or liability under the Tax Law or claiming exemption from such tax or liability and is binding upon the Commissioner with respect to that person only. Advisory opinions may, at the Commissioner's discretion, be issued to any non-taxpayer including, but not limited to, a local official petitioning on behalf of a local jurisdiction or the head of a state agency petitioning on behalf of the agency.

A petition for advisory opinion will not be accepted if submitted by any person or entity acting on behalf of an unidentified person or entity.

Areas in which an advisory opinion may be requested

A petitioner may request an advisory opinion relating to any tax or program administered by the Commissioner. These taxes include not only the taxes imposed under the New York State Tax Law, but also various other taxes, such as New York City's personal income tax on residents, the city of Yonkers income tax surcharge on residents, and the city of Yonkers earnings tax on nonresidents, as well as the sales and use taxes imposed by various localities throughout the state. These also include programs such as the School Tax Relief (STAR) rebate program or any similar program administered by the Commissioner. An advisory opinion may be sought for a substantive question, such as does a specific transaction give rise to a tax liability, or a procedural question, such as is withholding of income tax required under specified circumstances. Advisory opinions may be used for purposes of tax planning. Thus, one may be requested for a hypothetical or projected future set of facts. Advisory opinions may also be requested when questions arise during an audit or an examination of a tax return or for questions relating to a taxpayer's claim for refund, credit, or reimbursement.

Note: The petitioner may elect, when submitting the petition, to reserve the right to apply for the Voluntary Disclosure and Compliance (VDC) Program pursuant to Tax Law § 1700 with respect to the subject of the advisory opinion request. If an audit or investigation begins while a petition for advisory opinion is under consideration, the electing petitioner will not be prohibited from participating in the VDC Program with regard to the subject of the advisory opinion; however, the audit or investigation will proceed. If the electing petitioner chooses to participate in the VDC Program by then submitting an application, the department will extend to that petitioner the benefits of the VDC Program as long as the petitioner meets all other qualifications for the program. The petitioner must apply within 30 days of the date the advisory opinion is issued or, if the petition is withdrawn before the advisory opinion is issued, within 30 days of the date that the petitioner notifies the Tax Department that the petition is withdrawn. If the petitioner does not apply for the VDC Program within this 30 day period, the petitioner will not receive any of the benefits of the VDC Program and will be subject to any ongoing or impending audit or investigation.

When an advisory opinion will not be issued

An advisory opinion will not be issued if the petition for advisory opinion relates to a pending question raised by the petitioner on:

- a petition for a decision or determination by the Division of Tax Appeals under 20 NYCRR Part 3000, or any appeals therefrom;

- a request for a conciliation conference and issuance of a conciliation order by the Division of Taxation's Bureau of Conciliation and Mediation Services under 20 NYCRR Part 4000 unless all the parties to the conciliation conference consent to the issuance of an advisory opinion;
- a petition for a declaratory ruling by the Commissioner under 20 NYCRR 2375.3.

A person may withdraw a petition and timely submit a question using an alternative procedure.

Issues regarding nexus will not be addressed in an Advisory Opinion and any petition for Advisory Opinion requesting a determination about nexus will be rejected.

Who may file a petition for advisory opinion

- A petition for advisory opinion may be filed by an individual on that individual's own behalf; a partner on behalf of a partnership; a local official on behalf of a local jurisdiction; the head of a state agency on behalf of the agency; or an officer or employee of a corporation on behalf of the corporation. If a corporation acts through an employee, a power of attorney executed by an officer of the corporation must be filed with the petition.
- The spouse, parent, or guardian of a minor or a person who prepared the tax return of a minor may file a petition for advisory opinion on behalf of such minor. Any person having a proper interest in doing so may file a petition for advisory opinion on behalf of an individual who is mentally or physically incapable of filing such a petition without filing a power of attorney.
- Any of the following may file a petition for advisory opinion on behalf of another individual, a local jurisdiction, a state agency, or a business entity if authorized by a power of attorney signed by such other individual, local official on behalf of the local jurisdiction, head of the state agency on behalf of the agency, partner on behalf of a partnership, or officer of a corporation on behalf of the corporation, if that power of attorney is filed with the Tax Department before or concurrently with the filing of the petition for advisory opinion:
 - an attorney-at-law licensed to practice in New York State;
 - a certified public accountant duly qualified to practice in New York State;
 - a public accountant enrolled with the New York State Education Department under Article 149 of the Education Law;
 - an attorney-at-law or accountant duly authorized to practice in any other state;
 - a person admitted to practice before the Internal Revenue Service or before the Tax Court of the United States; and
 - the petitioner's spouse, child, or parent.
- No person other than those described above may file a petition for advisory opinion on behalf of another except by special permission of the Commissioner of Taxation and Finance. A request for permission must be made in writing and sent to the address on page 2.

Publication

All issued advisory opinions will be published and made available to the public. The complete text of the advisory opinion will be published, but the petitioner's name, address, and identification numbers will be redacted.

Additional information may be redacted if requested in the petition and if, in the sole judgment of the Tax Department, the

information would, for purposes of Public Officers Law § 87(2)(d) constitute a trade secret or information that, if disclosed, would cause substantial injury to the petitioner's competitive position. The petitioner must clearly identify the information requested to be redacted in the original petition and the basis for requesting redaction.

While a petition for advisory opinion may be withdrawn at any time by the petitioner, once a petition is accepted, the Tax Department will not discuss or disclose its conclusions regarding the issues raised in the petition. The Tax Department will communicate with the petitioner only to clarify the facts or issues presented or to obtain additional facts needed to reach a conclusion. If a petition is withdrawn, the Tax Department may publish a version of the advisory opinion that was drafted as part of the document series called *New York Tax Guidances (NYT-G)*. Information that identifies the petitioner will be removed from the document before it is published.

Specific instructions

Identification number

Enter petitioner's and representative's social security number, employer identification number, or other number assigned by the NYS Tax Department. Except in extraordinary circumstances, a petition will be rejected if these numbers are missing.

No identification numbers will be included in published advisory opinions.

Item 2 – Required information

- A. If the petition relates to a matter under audit, state the periods involved and include the identifying numbers of any applicable notices issued by this department.
- B. If the petition relates to a pending claim for credit or refund, indicate the periods and the amount involved, as well as the identifying numbers of the claim or claims.
- C. If the petition relates to an issued statutory notice, enclose a copy of that notice. The term *statutory notice* means any written notice from the Commissioner that advises a person of a tax deficiency; determination of tax due; assessment; denial of a refund or credit application; or cancellation, revocation, suspension, or denial of an application for a license, permit, or registration if that notice gives the person a right to a hearing by the Division of Tax Appeals provided a petition for hearing is timely filed under the provisions of the applicable article of the Tax Law. If the petition relates to a pending question about which a statutory notice has been issued, the petitioner may not be entitled to an advisory opinion.
- D. If the petition relates to some matter pending before the Tax Department that is not described in A, B, or C above, mark this box and describe the matter in the *Explanation* section. However, a petition for advisory opinion will be rejected in the following circumstances.

If the petition relates to a pending question raised by the petitioner in a petition for a declaratory ruling, the petitioner will not be entitled to an advisory opinion. A *declaratory ruling* is a ruling requested under section 2375.3 of the Regulations of the Commissioner of Taxation and Finance (20 NYCRR 2375.3).

If the petition relates to a pending question raised by the petitioner in a petition filed under Part 3000 of the Regulations of the Tax Appeals Tribunal (20 NYCRR Part 3000), the petitioner is not entitled to an advisory opinion.

If the petition relates to a pending question raised by the petitioner in a petition filed under Part 4000 of the Regulations of the Commissioner of Taxation and Finance (20 NYCRR Part 4000) for a conciliation conference with the Bureau of Conciliation and Mediation Services, the petitioner

will not be entitled to an advisory opinion unless all the parties to the conciliation conference consent to the issuance of an advisory opinion.

Items 3 and 4 – Statements of issue(s) and facts

The petition should be typewritten if possible, but handwritten petitions will be accepted. The petition should set forth the specific set of facts to which the request for the advisory opinion relates, the exact issue sought to be resolved, and the petitioner's reasons for requesting the advisory opinion. The petition may be rejected if it does not contain sufficient facts to understand the issues to be addressed. The petition may include a presentation of the petitioner's contentions as to the appropriate resolution of the issue raised in the petition and any supporting arguments and citations of pertinent law or regulations. If tax years or periods are not indicated on the other documents attached to the petition, the taxpayer must state or report, if known, the tax years or periods involved.

Item 5 – Request for redaction and consent to publication

The petitioner's name, address, and identifying numbers will be automatically redacted from the published version of all advisory opinions. If additional information is requested to be redacted, mark an **X** in the box and provide a detailed description of the information requested to be redacted and an explanation of the basis for this request. By signing the petition, you consent to publication of the advisory opinion.

Disclosure of contents of petition

The department may be required to disclose the contents of the petition to third parties pursuant to Article 6 of the Public Officers Law (Freedom of Information Law), subject to the protections for personal privacy, trade secrets, and other records.

Power of attorney

If someone other than the petitioner is signing this petition, a power of attorney must be on file with the Tax Department. If a power of attorney granting this authority is not already on file, you may complete Form POA-1, *Power of Attorney*, and attach it to this petition.

Mail completed petition 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 Service*.

Privacy notification – New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our website at **www.tax.ny.gov**
(for information, forms, and online services)



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