

1 Part 8 of Subchapter A of Title 20 of the Codes, Rules and Regulations of the State of
2 New York is repealed and a new Part 8, Assessment, Revision, Refund and Review, is added to
3 read as follows:

4 PART 8

5 ASSESSMENT, REVISION, REFUND AND REVIEW

6 Subpart 8-1 Assessment

7 Subpart 8-2 Limitation of Time on Credit or Refund

8 Subpart 8-3 Review of Determinations and Decisions

9 SUBPART 8-1

10 ASSESSMENT

11 Sec.

12 8-1.1 General.

13 8-1.2 Limitation of time on assessment.

14 8-1.3 Assessment of tax on combined reports.

15 Section 8-1.1 General. [Tax Law, section 1082(a)]

16 The amount of tax due as shown on a report, or the amount of tax due that would have
17 been shown on a report but for a mathematical or clerical error, is deemed to be assessed on the
18 date of filing of the report. This includes an increase of tax as shown on any amended report, or
19 that would have been shown on any amended report but for a mathematical or clerical error. Any
20 amount paid as a tax or with respect to a tax, other than amounts paid as estimated tax, is deemed
21 to be assessed upon the date of receipt of payment.

22 Section 8-1.2 Limitation of time on assessment. [Tax Law, section 1083]

23 (a) Except as otherwise provided in this section, any tax imposed by Article 9-A must be
24 assessed within three years after the report was filed. The report is deemed to be filed on the
25 prescribed due date or the actual date filed, whichever is later.

26 (b) Exceptions to the limitation in subdivision (a) of this section are as follows:

27 (1) The tax may be assessed at any time if:

28 (i) no report is filed;

29 (ii) a false or fraudulent report is filed with intent to evade tax; or

30 (iii) the taxpayer fails to file a report or an amended report as required by Tax
31 Law section 211(3) with respect to an increase or a decrease in Federal taxable income or
32 Federal tax, or with respect to a change, correction or renegotiation of tax that is treated
33 in the same manner as if it were a deficiency for Federal income tax purposes, or with
34 respect to a computation or recomputation of tax that is treated in the same manner as if it
35 were a deficiency for Federal income tax purposes.

36 (2) If both the Commissioner and the taxpayer have consented in writing to an extension
37 of time for the assessment of tax before the expiration of the time prescribed in this section for
38 such assessment, the tax may be assessed at any time prior to the expiration of the period agreed
39 upon. The time for the assessment of tax may be extended by subsequent agreements in writing
40 made before the expiration of the period previously agreed upon.

41 (3) If the taxpayer files a report or an amended report as required by Tax Law section
42 211(3) with respect to an increase or a decrease in Federal taxable income or Federal tax, or with
43 respect to a change, correction or renegotiation of tax that is treated in the same manner as if it
44 were a deficiency for Federal income tax purposes, or with respect to a computation or
45 recomputation of tax that is treated in the same manner as if it were a deficiency for Federal

46 income tax purposes, the assessment (if not deemed to have been made upon the filing of the
47 report or amended report) may be made at any time within two years after such report or
48 amended report was filed. Such assessment of tax may be made for an amount up to but not
49 exceeding the amount of the increase in tax attributable to such Federal change, correction or
50 renegotiation of tax, or such computation or recomputation of tax. The amount of tax attributable
51 to such Federal change, correction or renegotiation, or such computation or recomputation means
52 the amount determined by recomputing each of the alternative tax bases for measuring the tax
53 imposed under Article 9-A, taking into account the item or items resulting in the Federal change,
54 correction or renegotiation, or the computation or recomputation for the taxable year. This
55 limitation does not affect other limitations.

56 (4) If a deficiency of tax is attributable to the application of a net operating loss carryback
57 or a net capital loss carryback, it may be assessed within the period of limitation on assessment
58 for the loss year.

59 (5) An erroneous refund is considered an underpayment of tax as of the date of the
60 refund. The assessment of deficiency may be made within two years of such refund, or within
61 five years of such refund if it appears that any part of the refund was induced by fraud or the
62 misrepresentation of a material fact.

63 (6) After the report has been filed, the taxpayer or a fiduciary representing the taxpayer
64 may make a written request that the tax be assessed within 18 months, if one of the following
65 conditions is met:

66 (i) such written request notifies the Commissioner that the taxpayer contemplates
67 dissolution at or before the expiration of the 18-month period, the dissolution is in good
68 faith begun before the end of the 18-month period, and the dissolution is completed;

69 (ii) such written request notifies the Commissioner that a dissolution has begun in
70 good faith and the dissolution is completed; or

71 (iii) a dissolution has been completed at the time of the written request.

72 The assessment made pursuant to such written request must not be made more than three
73 years after the report was filed, except as otherwise provided in this subdivision and subdivision
74 (c) of this section.

75 (7) The apportionment factor, as determined under Tax Law section 210-A and pursuant
76 to Part 4 of this Title, upon which the taxpayer's report (or any additional assessment) was based
77 must not be changed during the additional period of limitation allowed in the case of nonfiling of
78 a report of a Federal change, correction or renegotiation of tax, or a computation or
79 recomputation of tax; or in the case of a report of a Federal change, correction or renegotiation of
80 tax, or a computation or recomputation of tax; or in the case of a deficiency based on a net
81 operating loss carryback or a net capital loss carryback. Both the Commissioner and the taxpayer
82 are precluded from adjusting the apportionment factor in such cases. Under the same
83 circumstances, a petition for the redetermination of a deficiency or a notice of deficiency does
84 not open the apportionment factor. The apportionment factor upon which the taxpayer's report
85 was based may always be changed within the three-year period described in subdivision (a) of
86 this section, or within the additional one-year period described in paragraph (9) of this
87 subdivision, if such change to the apportionment factor is related to or would be the result of the
88 change or correction on the amended report.

89 (8) The tax may be assessed within three years after:

90 (i) the filing of the report containing information reporting the change in use of an
91 industrial waste treatment facility or of an air pollution control facility during the taxable
92 year that the change in use occurs;

93 (ii) the filing of the report for the taxable year during which the industrial waste
94 treatment facility or air pollution control facility is completed and the taxpayer fails to
95 obtain a permanent certificate of compliance;

96 (iii) the Commissioner receives notice of the revocation of a certificate of
97 compliance with respect to an air pollution control facility, either from the taxpayer or as
98 required by section 19-0309 of the Environmental Conservation Law, whichever notice is
99 received earlier; or

100 (iv) the Commissioner receives notice of revocation of the taxpayer's certification
101 under Article 18-B of the General Municipal Law as required by section 959(a) of the
102 General Municipal Law with respect to an empire zone or an empire zone equivalent
103 area, to the extent that the tax is attributable to such decertification.

104 (9) If the taxpayer files an amended report on or after April 12, 2018, other than an
105 amended report as required by Tax Law section 211(3) and further described in paragraph (3) of
106 this subdivision, the assessment (if not deemed to have been made upon the filing of the
107 amended report) attributable to a change or correction on the amended report from a prior report
108 may be made at any time within one year after filing the amended report or within three years
109 after filing the original report, whichever is later. Such assessment of tax includes the recovery of
110 a refund paid to the taxpayer. This limitation does not affect other limitations.

111 (c) Tax may be assessed at any time within six years after filing the report if the taxpayer
112 omits from gross income an amount properly includible that is in excess of 25 percent of the
113 amount of gross income stated in the report.

114 (d) Tax may be assessed at any time within one year after the revocation of a certificate
115 of completion issued pursuant to section 27-1419 of the Environmental Conservation Law by a
116 determination issued pursuant to such section of the Environmental Conservation Law, after such
117 determination is final and is no longer subject to judicial review.

118 (e) For any of the transactions defined in Tax Law section 1085(p)(3), if the taxpayer
119 fails to file, disclose or provide any statement, report or other information as required by Tax
120 Law section 25(a), tax may be assessed at any time within the later of:

121 (1) one year after the Commissioner is provided with such statement, report or other
122 information or one year after the date upon which the requirements of Tax Law section 25(c) are
123 met for any such transaction, whichever is earlier; or

124 (2) six years after the taxpayer's report was filed, if the deficiency is attributable to an
125 abusive tax avoidance transaction, as that term is defined in Tax Law section 1083(c)(11)(C),
126 including but not limited to the transactions described in Tax Law section 1085(k-1)(5).

127 (f) After the mailing of the notice of deficiency, the running of the period of limitation on
128 assessment or collection of tax or other amount (or a transferee's liability) is suspended for the
129 period between the date of filing a timely petition with the Division of Tax Appeals under Tax
130 Law section 1089 or a timely request for a conciliation conference with the Bureau of
131 Conciliation and Mediation Services pursuant to section 4000.3 of this Title and the date upon
132 which such petition or request is no longer subject to administrative review pursuant to Part 3000
133 of this Title.

134 Section 8-1.3 Assessment of tax on combined reports.

135 (a) Where the tax is computed on the basis of a combined report, the Commissioner may
136 assess the entire amount of the tax and the Metropolitan Transportation Business Tax Surcharge,
137 as imposed under Tax Law section 209-B and pursuant to Part 9 of this Title, against any one or
138 more of the taxpayers covered by the combined report, in such proportions as the Commissioner
139 determines, but every such taxpayer is liable for the entire amount.

140 (b) In the case of a taxpayer that computes its tax on the basis of a combined report where
141 the requirements for filing a combined report are not met or in the case of the inclusion of one or
142 more corporations where the requirements for inclusion of such corporation or corporations are
143 not met, the tax assessed is:

144 (1) for the corporations that do not meet the requirements to file on a combined basis, the
145 amount that would have been required to be shown on the taxpayer's report if the taxpayer had
146 filed on a separate company basis; and

147 (2) for the corporations that meet the requirements to file on a combined basis, the
148 amount that would have been required to be shown if the reports had been filed in combination
149 only with those corporations that meet the requirements for filing on a combined basis.

150 SUBPART 8-2

151 LIMITATION OF TIME ON CREDIT OR REFUND

152 Sec.

153 8-2.1 General.

154 8-2.2 Extension of time by agreement.

155 8-2.3 Notice of change or correction of Federal income.

156 8-2.4 Overpayment attributable to net operating loss carryback or net capital loss carryback.

157 8-2.5 Failure to file claim within prescribed period.

158 8-2.6 Effect of administrative review.

159 8-2.7 Limit on amount of credit or refund.

160 8-2.8 Early filing or prepayment by taxpayer.

161 Section 8-2.1 General. [Tax Law, section 1087(a)]

162 (a) If the taxpayer has filed a report for the taxable year:

163 (1) a claim for credit or refund of an overpayment of tax must be filed by the taxpayer
164 within three years from the time such report was filed or two years from the time the tax was
165 paid, whichever is later;

166 (2) in the case of any overpayment arising from an erroneous denial by the Department of
167 Environmental Conservation of a certificate of completion pursuant to section 27-1419 of the
168 Environmental Conservation Law, a claim for credit or refund of an overpayment of tax must be
169 filed by the taxpayer two years from the time a final determination to the effect that such denial
170 was erroneous is made and is no longer subject to judicial review, if later than the time periods
171 described in paragraph (1) of this subdivision.

172 (b) If no report has been filed, a claim for credit or refund of an overpayment of tax must
173 be filed by the taxpayer within two years from the time the tax was paid.

174 (c) The following limitations apply with respect to the amount of the credit or refund
175 filed by the taxpayer pursuant to subdivision (a) or subdivision (b) of this section:

176 (1) If the taxpayer's claim is filed within the three-year period from the time the report
177 was filed pursuant to subdivision (a)(1) of this section, the amount of credit or refund can not
178 exceed the portion of the tax paid within the three years immediately preceding the filing of the
179 claim plus the period of any extension of time for filing the report.

180 (2) If the taxpayer's claim is filed within the two-year period from the time the tax was
181 paid pursuant to subdivision (a)(1) of this section, the amount of the credit or refund can not
182 exceed the portion of the tax paid during the two years immediately preceding the filing of the
183 claim.

184 (3) If the taxpayer's claim is filed within the two-year period from the time a final
185 determination is made, pursuant to subdivision (a)(2) of this section, the amount of the credit or
186 refund may exceed the portion of the tax paid during the two years immediately preceding the
187 claim, but only to the extent of the amount of the overpayment attributable to the denial of the
188 certificate of completion, as described in such subdivision (a)(2).

189 (4) If no claim is filed by the taxpayer, the amount of a credit or refund can not exceed
190 the amount that would be allowed if a claim had been filed on the date the credit or refund is
191 allowed.

192 (d) Special restrictions apply to proceedings on a claim for refund of tax paid as a result
193 of an increase or a decrease in Federal taxable income or Federal tax, or a change, correction or
194 renegotiation of tax treated in the same manner as if it were a deficiency for Federal income tax
195 purposes, or a computation or recomputation of tax treated in the same manner as if it were a
196 deficiency for Federal income tax purposes (see section 8-1.2[b][3] of this Part); or as a result of
197 a net operating loss carryback or a net capital loss carryback (see section 8-1.2[b][4] of this Part).
198 These restrictions are the same as those set forth in section 8-1.2(b)(7) of this Part, and such
199 restrictions apply both to the Commissioner and to the taxpayer.

200 Section 8-2.2 Extension of time by agreement. [Tax Law, section 1087(b)]

201 (a) If there is an extension by agreement under Tax Law section 1083(c)(2) of the time
202 for assessment, the period for filing a claim for credit or refund, or for making credit or refund if
203 no claim is filed, does not expire prior to six months after the expiration of the extended period.

204 (b) The amount of any credit or refund, as described in subdivision (a) of this section, can
205 not exceed the portion of the tax paid after the execution of the agreement and before the date of
206 filing the claim or the making of the credit or refund, plus the portion of tax paid within the
207 applicable period as if the claim had been filed on the date the agreement was executed.

208 Section 8-2.3 Notice of change or correction of Federal income. [Tax Law, sections 211(3),
209 1087(c)]

210 (a) If the taxpayer is required to file a report or an amended report with respect to a
211 decrease or an increase in Federal taxable income or Federal tax, or with respect to a Federal
212 change, correction or renegotiation of tax treated in the same manner as if it were an
213 overpayment for Federal income tax purposes, or a computation or recomputation of tax treated
214 in the same manner as if it were an overpayment for Federal income tax purposes, a report or
215 amended report is required to be filed:

216 (1) within 90 days of the final Federal determination; or

217 (2) in the case of a combined report, within 120 days of the final Federal determination.

218 (b) If the report or amended report is not filed within the period specified in subdivision
219 (a) of this section, interest on any resulting credit or refund ceases to accrue after such period has
220 expired.

221 (c) The claim for credit or refund of any resulting overpayment of tax must be filed by
222 the taxpayer within two years from the end of the period specified in subdivision (a) of this
223 section.

224 (d) The amount of refund or credit is limited to the reduction in tax attributable to the
225 Federal change, correction or renegotiation, or the computation or recomputation, and must be
226 computed without change in the apportionment factor, as determined under Tax Law section
227 210-A and pursuant to Part 4 of this Title, upon which the taxpayer's report (or any additional
228 assessment) was based.

229 Section 8-2.4 Overpayment attributable to net operating loss carryback or net capital loss
230 carryback. [Tax Law, section 1087(d)]

231 (a) A claim for credit or refund of so much of an overpayment as is attributable to the
232 application to the taxpayer of a net operating loss carryback (see Subpart 3-8 of this Title) or a
233 net capital loss carryback (see Subpart 3-7 of this Title) must be filed within whichever of the
234 times prescribed below expires the latest:

235 (1) within three years from the time the report was due for the taxable year of the loss,
236 determined with regard to any extension of time for filing such report; or

237 (2) within the time prescribed in section 8-2.2 of this Subpart—that is, within six months
238 after the expiration of the period within which an assessment may be made pursuant to the
239 agreement or any extension of the agreement, with respect to the taxable year of the loss; or

240 (3) where applicable, within the time prescribed in section 8-2.3 of this Subpart—that is,
241 within two years from the 90th day (or 120th day, in the case of a combined report) after the final
242 Federal determination, with respect to the taxable year to which the net operating loss or the net
243 capital loss is being carried back where the net operating loss or the net capital loss is attributable
244 to the Federal change, correction or renegotiation, or the computation or recomputation.

245 (b) If the claim for credit or refund is filed after the time prescribed in section 8-2.1 of
246 this Subpart, or after the time prescribed in section 8-2.2 of this Subpart, if applicable, with

247 respect to the taxable year to which the net operating loss or the net capital loss is being carried
248 back, the amount of the credit or refund must be computed without changing the apportionment
249 factor, as determined under Tax Law section 210-A and pursuant to Part 4 of this Title, upon
250 which the taxpayer's report (or any additional assessment) was based.

251 Section 8-2.5 Failure to file claim within prescribed period. [Tax Law, section 1087(e)]

252 No credit or refund will be allowed or made, except as provided in section 8-2.6 of this
253 Subpart or section 8-3.4 of this Part, after the expiration of the applicable period of limitation
254 specified in this Part, unless a claim for credit or refund is filed by the taxpayer within the period
255 of limitation. Any later credit will be void and any later refund will be erroneous. No period of
256 limitation specified in any other law or regulation will apply to the recovery by a taxpayer of
257 moneys paid with respect to taxes under Article 9-A.

258 Section 8-2.6 Effect of administrative review. [Tax Law, section 1087(f)]

259 If a notice of deficiency for a taxable year has been mailed to the taxpayer under Tax
260 Law section 1081, and if the taxpayer either files a timely petition with the Division of Tax
261 Appeals under Tax Law section 1089 or files a timely request for a conciliation conference with
262 the Bureau of Conciliation and Mediation Services pursuant to section 4000.3 of this Title, a
263 determination may be made pursuant to the administrative review following such filing that the
264 taxpayer has made an overpayment for that year (whether or not a determination has been made
265 that there was a deficiency for that year). No separate claim for credit or refund for that year may
266 be filed, and no credit or refund for that year will be allowed or made, except:

267 (a) as to overpayments that are the subject of such a determination that has become final;

268 and

269 (b) as to any amount collected in excess of an amount computed in accordance with such
270 a determination that has become final; and

271 (c) as to any amount collected after the expiration of the period of limitation upon
272 levying; and

273 (d) as to any amount claimed as a result of a change or correction described in section 8-
274 2.3 of this Subpart.

275 Section 8-2.7 Limit on amount of credit or refund. [Tax Law, section 1087(g)]

276 (a) The amount of overpayment described in section 8-2.6 of this Subpart will, when the
277 determination of such overpayment has become final, be credited or refunded in accordance with
278 Tax Law section 1086(a), and must not exceed the amount of tax determined as part of such final
279 determination to have been paid:

280 (1) after the mailing of the notice of deficiency; or

281 (2) within the period that would be applicable under section 8-2.1, 8-2.2 or 8-2.3 of this
282 Subpart if, on the date of the mailing of the notice of deficiency, a claim has been filed stating
283 the grounds upon which the overpayment has been determined.

284 (b) Special restrictions apply to proceedings on a petition for redetermination of a
285 deficiency where the notice of deficiency is issued as a result of an increase or a decrease in
286 Federal taxable income or Federal tax, or a change, correction or renegotiation of tax treated in
287 the same manner as if it were a deficiency for Federal income tax purposes, or a computation or
288 recomputation of tax treated in the same manner as if it were a deficiency for Federal income tax
289 purposes (see section 8-1.2[b][3] of this Part); or as a result of a net operating loss carryback or a
290 net capital loss carryback (see section 8-1.2[b][4] of this Part). These restrictions are the same as

291 those set forth in section 8-1.2(b)(7) of this Part, and such restrictions apply both to the
292 Commissioner and to the taxpayer.

293 Section 8-2.8 Early filing or prepayment by taxpayer. [Tax Law, section 1087(h) and (i)]

294 For purposes of the limitations specified in this Subpart:

295 (a) Any report filed by the taxpayer before the last day prescribed for its filing is deemed
296 to have been filed on such last day, without regard to any extension granted to the taxpayer.

297 (b) Any tax paid by the taxpayer before the last day prescribed for its payment (including
298 any amount paid by the taxpayer as estimated tax for a taxable year), without regard to any
299 extension granted to the taxpayer, is deemed to have been paid on the 15th day of the third
300 month following the close of the taxable year, for taxable years beginning before January 1,
301 2016, and on the 15th day of the fourth month following the close of the taxable year, for taxable
302 years beginning on or after January 1, 2016.

303 SUBPART 8-3

304 REVIEW OF DETERMINATIONS AND DECISIONS

305 Sec.

306 8-3.1 General.

307 8-3.2 Judicial review exclusive remedy of taxpayer.

308 8-3.3 Assessment pending review; review bond.

309 8-3.4 Credit, refund or abatement after review.

310 8-3.5 Date of finality of Division of Tax Appeals determination or Tax Appeals Tribunal
311 decision.

312 Section 8-3.1 General. [Tax Law, section 1090(a)]

313 A decision of the Tax Appeals Tribunal is subject to judicial review sought by any
314 taxpayer affected by the decision. A taxpayer seeking such review must do so pursuant to Article
315 78 of the Civil Practice Law and Rules. An application for judicial review must be made within
316 four months of notice of the decision being sent to the taxpayer by certified or registered mail.
317 Section 8-3.2 Judicial review exclusive remedy of taxpayer. [Tax Law, section 1090(b)]

318 The review of a decision of the Commissioner provided for by this Subpart is the only
319 remedy available to a taxpayer for judicial review of the taxpayer's tax liability under Article 9-
320 A.

321 Section 8-3.3 Assessment pending review; review bond. [Tax Law, section 1090(c)]

322 Irrespective of any restrictions on the assessment and collection of deficiencies (see
323 Subpart 8-1 of this Part and Subpart 7-4 of this Title—Collection), the Commissioner may assess
324 a deficiency after the expiration of the four-month period specified in section 8-3.1 of this
325 Subpart, even if an application for judicial review with respect to such deficiency has been duly
326 made by the taxpayer. The Commissioner may not assess the deficiency if the taxpayer, at or
327 before the time the taxpayer's application for review is made, has done one of the following:

328 (a) paid the deficiency;

329 (b) deposited the amount of the deficiency with the Commissioner; or

330 (c) filed with the Commissioner a bond (which may be a jeopardy bond under Tax Law

331 section 1094[h]) in the amount of the portion of the deficiency, including interest and other

332 amounts, for which the application for review is made. The bond must also secure all costs and

333 charges that may accrue against the taxpayer in the prosecution of the proceeding, including

334 costs of all appeals, and with surety approved by a New York Supreme Court justice. The bond

335 must be conditioned upon the payment of the deficiency, including interest and other amounts, as

336 finally determined and such costs and charges. If as a result of a waiver of the restrictions on the
337 assessment and collection of a deficiency any part of the amount determined by the
338 Commissioner is paid after the filing of the review bond, such bond will be proportionately
339 reduced, upon the request of the taxpayer.

340 Section 8-3.4 Credit, refund or abatement after review. [Tax Law, section 1090(d)]

341 If the amount of a deficiency determined by the Commissioner is disallowed in whole or
342 in part by the court of review, the amount so disallowed will be credited or refunded to the
343 taxpayer. It is not necessary for the taxpayer to make a claim for the credit or refund. If the
344 taxpayer has not made payment, the amount will be abated.

345 Section 8-3.5 Date of finality of Division of Tax Appeals determination or Tax Appeals Tribunal
346 decision. [Tax Law, section 1090(e)]

347 (a) A determination of an administrative law judge in the Division of Tax Appeals is final
348 unless any party to the hearing takes exception by timely requesting a review by the Tax Appeals
349 Tribunal as provided in Tax Law section 2006.

350 (b) A decision of the Tax Appeals Tribunal becomes final upon:

351 (1) the expiration of the four-month period prescribed in section 8-3.1(a) of this Subpart,
352 if no application for review has been made within the four-month period;

353 (2) the expiration of the time for all further judicial review, if an application for review
354 has been duly made; or

355 (3) the rendering by the Tax Appeals Tribunal of a decision in accordance with the
356 mandate of the court on review.

357 (c) Notwithstanding the provisions of subdivision (b) of this section, for the purpose of
358 making an application for review, the decision of the Tax Appeals Tribunal is deemed final on
359 the date the notice of decision is sent by certified or registered mail to the taxpayer.

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