

Additional 2004 Legislative Changes Relating to the Miscellaneous Taxes

Governor George E. Pataki recently signed into law Chapter 60 of the Laws of 2004, adding a new section 173-a to the Tax Law, relating to certain taxpayer hearing rights, and Chapter 418 of the Laws of 2004, adding a new section 27 to the Tax Law, relating to the cancellation of the exempt organization status of any organization related to terrorist activity.

Taxpayers' hearing rights

The Tax Law was amended to change Tax Department practice with respect to the availability of hearings in certain cases. Specifically, there are no longer formal prepayment hearing rights where tax, interest, and/or penalty: (1) is owed due to mathematical or clerical errors on a return; (2) is owed due to changes made to the taxpayer's federal return by the Internal Revenue Service or other competent federal authority (federal changes¹); or (3) is owed because the taxpayer has not paid all or part of the amount of the tax that the taxpayer has shown as due on the taxpayer's return. However, after payment of the tax, interest, and/or penalty owed, the taxpayer may still file a timely claim for refund or credit. If the Tax Department denies the claim, the taxpayer may then apply for a conciliation conference in the Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals².

In addition, these amendments provide authority for the Tax Department to issue statutory notice and demands for sales and use tax and miscellaneous taxes in order to allow for the modifications to the prepayment hearing procedures for such taxes.

These amendments apply to most taxes administered by the Tax Department, including the miscellaneous taxes. However, the amendments do not apply to the Tax on Mortgages (Article 11 of the Tax Law) and the Stock Transfer Tax (Article 12 of the Tax Law).

These amendments take effect immediately, and apply to notice and demands and notices of additional tax due issued on or after December 1, 2004.

(See Tax Law, Sections 173-a, 681(d), 682(a), 684(c), 1081(d), 1082(a) and 1084(c))

¹Federal changes apply only to personal income, estate, and corporate taxes but are listed here to describe this new law accurately.

²For estate tax, the estate may apply for a conciliation conference in the Bureau of Conciliation and Mediation Services or petition the surrogate's court.

Revocation of tax-exempt status of identified terrorist organizations

The Tax Law was amended to provide for the revocation of the tax-exempt status, for New York State tax purposes, of terrorist organizations whose names have been published pursuant to Internal Revenue Code Section 501(p) and which are no longer tax-exempt for federal purposes. This section applies to all of the state and local taxes, fees and other impositions administered by the Commissioner of Taxation and Finance.

An organization whose tax-exempt status has been revoked pursuant to paragraph 1 of section 27 of the Tax Law will have the right to appeal the determination using the procedures set forth in Article 40 of the Tax Law. However, the organization cannot challenge the merits of the determination made by the Internal Revenue Service.

This amendment was effective on September 8, 2004, although the revocation of an organization's tax-exempt status will become effective on the later of November 11, 2003, or the date that the Internal Revenue Service publishes the organization's name pursuant to Internal Revenue Code section 501(p).

(See Tax Law, section 27)