

**Consolidation of Protest Procedures for a
Sales or Use Tax *Notice of Determination* or *Notice and Demand***

The Tax Law imposes personal responsibility for payment of sales or use tax on certain officers, directors, employees or members of a business that has an outstanding sales or use tax liability. The officers or employees who are personally liable for a business debt are referred to as *responsible persons*.

Prior to July 22, 1998, a responsible person was required to apply for his or her own hearing or conference to protest a *Notice of Determination* issued to such person in an effort to collect sales or use tax owed by the business. Under Chapter 456 of the Laws of 1998, section 1138(a)(3)(B) of the Tax Law was amended to provide that a formal protest of a sales or use tax *Notice of Determination* filed by a business automatically constitutes a formal protest on behalf of any responsible persons who subsequently receive a *Notice of Determination* with respect to the same sales or use tax liability. Likewise, an application filed by a business requesting a hearing on an original-issue *Notice and Demand* (a *Notice and Demand* that can be formally protested) will cover any related notices subsequently issued to responsible persons of the business.

In other words, on and after July 22, 1998, if a business files a petition with the Division of Tax Appeals to protest a sales or use tax *Notice of Determination*, or an original-issue sales or use tax *Notice and Demand*, the business's petition for a hearing will automatically cover any sales or use tax *Notice of Determination* subsequently issued to responsible persons of the business for the same sales or use tax periods and liabilities.

This rule also applies to requests filed by a business for a conference with the Bureau of Conciliation and Mediation Services. It does not, however, apply to any informal proceedings with the Tax Department. (To initiate a formal protest, a taxpayer must file a written petition (Form TA-10) for a hearing in the Division of Tax Appeals, or a written request (Form CMS-1, *Request for Conciliation Conference*, for a conference in the Bureau of Conciliation and Mediation Services. Any proceeding that is not initiated by the filing of one of these documents is not a formal proceeding for these purposes.)

If a responsible person is deemed to have automatically protested a *Notice of Determination*, the responsible person has a right to a hearing on the merits of any issue concerning the notice, including whether the person is responsible for the collection and payment of all or part of the taxes at issue. The responsible person may decide to join the business in its proceeding if that proceeding is still active, have his or her own separate proceeding, or choose not to participate in a proceeding and receive the benefit of any reduction in liability obtained by the business.

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In all cases, the responsible person's right to petition for a hearing or conference on his or her own behalf is preserved. This legislation does not affect that right. Thus, if the business does not file an application for a hearing or conference, or the application filed by the business is not filed on time, then a responsible person's protest rights are not protected unless the responsible person timely files his or her own application. If, therefore, a responsible person is uncertain whether the business will protest its notice of tax due, or is not sure that the business has protested its notice in a timely manner, the responsible person should file his or her own separate petition for a hearing before the Division of Tax Appeals, or file a request for a conciliation conference with the Bureau of Conciliation and Mediation Services. The application for a hearing or conference must be filed within 90 days of the date the notice was mailed (150 days if the notice was mailed to an address outside the United States).

This change in procedure took effect July 22, 1998, and applies to applications for hearings and requests for conferences filed by businesses on and after that date.