



Your Rights and Obligations Under the Tax Law

A major function of the Department of Taxation and Finance is to help taxpayers understand their rights and responsibilities at each step in the administration and collection of New York State and local taxes administered by the department. Taxpayer awareness of these rights is essential to maintaining the efficiency and fairness of the state and local tax systems.

New York State established a Taxpayers' Bill of Rights in Tax Law Article 41. The Tax Department assists taxpayers in understanding their rights and responsibilities by providing:

- nontechnical statements that explain taxpayers' rights and the department's obligations with respect to audits;
- the procedures for taxpayers to seek review of adverse decisions of the department, claim refunds, and file complaints; and
- the procedures the department may use to enforce tax liabilities.

You can get more information about your rights as a taxpayer from our Web site, or by calling and requesting that we mail them to you (see *Need help?*).

This publication provides a summary of taxpayers' rights at various stages of the tax administration process.

The New York State tax audit

We conduct audits to verify that the correct amount of tax was paid. According to New York State Tax Law, during the audit you must provide the auditor with whatever records are necessary to verify the information you provided on your return. Depending on the type of return being audited, this may entail a review of your income, receipts, expenses, credits, and other business records.

Professional audit standards

Audits are conducted in accordance with professional auditing standards, by an auditor who is familiar with generally accepted accounting procedures and auditing techniques.

To avoid any conflict of interest, the auditor cannot have any personal relationship with the taxpayer, the taxpayer's family, or the taxpayer's employees (in the case of a business audit). Additionally, the auditor may not have any personal or financial interest in a business being audited.

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 of your rights are being violated, you should immediately contact the auditor's supervisor at the number provided.

To report allegations of employee misconduct, contact our Office of Internal Affairs at (518) 451-1566, or by mail to:

**NYS TAX DEPARTMENT
OFFICE OF INTERNAL AFFAIRS
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Your rights during an audit

While you are obliged to cooperate with the auditor, you should also be aware of your rights. These rights are designed to protect you from unreasonable demands, to minimize disruption of your business or personal life during the audit, and to protect you from arbitrary actions.

Statute of limitations

New York State Tax Law generally places a three-year statute of limitations on our right to assert additional tax due (generally, three years after your return was filed), beyond which we may not assess tax above what you reported on your return. A six-year statute of limitation applies to abusive tax avoidance transactions. You must obtain a written consent to extend the statute of limitations prior to expiration of the limitation period. The statute of limitations does not apply, however, for any period during which a taxpayer failed to file a return, failed to report the changes made by the Internal Revenue Service (IRS) to a federal tax return (*federal changes*) or filed a false or fraudulent return to evade tax. For income, estate, and corporation tax purposes, a taxpayer is generally required to report a federal change to New York State within 90 days after the final determination of the change, correction, renegotiation, or disallowance, and must state whether the determination is correct or incorrect.

Privacy and confidentiality

You have the right to know why we are requesting certain information, how we will use the information, and the consequences if you fail to submit the information. The Tax Law prohibits the disclosure of information obtained from 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 IRS and other government agencies, within defined standards of secrecy and reciprocity.

Representation during an audit

You may represent yourself, have someone accompany you, or have someone represent you during the audit. Any person representing you must have the proper written authorization (*power of attorney*) from you to act on your behalf. You may retain representation at any time during the audit, and have the right to suspend an interview at any time in order to obtain representation. However, the suspension to obtain a representative may be only for a reasonable period.

Former employees of the Department of Taxation and Finance are restricted from representing taxpayers before the department, for a period of two years after they leave the department. (Subject to some restrictions, former employees may represent taxpayers before the independent Division of Tax Appeals during this two-year period.) Former employees are permanently prohibited from representing taxpayers in matters in which they were directly involved during the period of their employment.

Audio recording

You may make an audio recording of any in-person interview by providing advance notice to us. You must make the recording at your own expense and with your own equipment. We also have the right to record any in-person interview with advance notice to you. If you request it, we will provide a transcript or copy of the recording to you, but only if you reimburse us for the cost.

The field audit

Field audits are usually scheduled at least 15 days in advance to give you time to assemble the required records. When you are selected for a field audit, an auditor will usually contact you by phone to set up the initial appointment. You will then receive a letter confirming the appointment and describing the books and records you'll need to make available. For a business audit, most appointments will be made at your place of business, to minimize your time away from your business activities. If you need longer than 15 days to gather the necessary records, you can usually request an extension of up to 30 days. For delays longer than 30 days, you must make a written request that substantiates the need for extra time.

Opening conference

At your initial meeting (the *opening conference*), the auditor will explain the audit approach and procedures, the audit process, and outline your protest rights and appeal procedures in case you disagree with an audit adjustment. Use this meeting to ask any questions you might have regarding your rights and responsibilities.

Audit techniques

There are several different techniques used for conducting audits. We may conduct a detailed audit, an audit involving a test period method, or in some instances, an audit involving a statistical sampling method. In addition, the scope of an audit may be expanded and completed as a multi-tax audit. The method an auditor chooses will depend on a number of variables, such as the type of tax, the accuracy and availability of your records, and the size and complexity of a business.

If preliminary findings result in a material effect on the reporting of another tax, those findings may be referred to another tax specialty at any time during the audit process. The audit adjustments of one tax specialty may be used as a basis for recalculation of tax in another, depending on the facts and circumstances of the case.

For sales and compensating use taxes, we may estimate any additional tax due only if, in response to our request for records, you have no records, or the records that you make available to us are inadequate for us to determine the tax due.

Audit duration

An audit generally covers a three-year period, and can take as little as several days or up to a year or more to complete. The duration depends on the complexity of the returns being audited, and on the completeness and accuracy of your records. Most audits, however, take only three to four days to complete.

Field audit findings

If the auditor recommends no changes, we will send you a letter acknowledging this, and thanking you for your cooperation.

If there are changes, the auditor will meet with you to explain the findings, and present copies of audit work papers and schedules. The auditor will explain the audit findings as well as the audit methods and procedures, in simple nontechnical terms. Findings may include:

- recommended changes in recordkeeping practices to correct accounting errors found during the audit;
- an explanation of the proper interpretation of the Tax Law in areas where there were errors made;
- a notice of additional taxes due; or
- a notification that a refund is due.

We will give you a reasonable amount of time to disapprove any of the audit findings, or to document any periods for which the audit test period was not representative of your actual business activity. The auditor will analyze any additional information you submit and, if appropriate, revise and resubmit the work papers with a *Statement of Proposed Audit Changes*.

If you agree

If you agree with the audit findings, we will ask you to sign the *Statement of Proposed Audit Changes*, and return the form to the auditor.

If you owe money but cannot pay in full immediately, you may be eligible for an installment payment agreement, which will allow you to spread out your payments (see *Installment payment agreement*). You should be aware, though, that interest (and possibly penalties) will continue to accrue on the unpaid balance.

If you disagree

If you disagree with the audit findings, indicate your disagreement on the *Statement of Proposed Audit Changes* and return the form to the auditor. All audit reports are reviewed carefully by supervisory personnel, so additional conferences can be held with the auditor's supervisor if necessary. If you still disagree with the audit findings, we will send you a *Notice of Deficiency* or *Notice of Determination* for the taxes due. At this point, you may formally appeal the audit findings through either our Bureau of Conciliation and Mediation Services, or through the independent Division of Tax Appeals. If you decide to appeal, you must generally file your appeal within 90 days of the date the notice was issued. The notice will inform you of the last date by which you must file your appeal. 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*. For a description of both methods of protest, see the section on *Your right to protest an action*.

In order to stop the accrual of additional penalties and interest, you also have the option of first paying any tax due, and then making a claim for refund within the time applicable to the tax involved. If we deny your claim completely or partially, you may then choose to formally appeal through either the Bureau of Conciliation and Mediation Services, or through the Division of Tax Appeals, within the applicable statutory period.

The desk audit

The desk audit is a review of tax returns, refund requests, or other documents that you have submitted. A desk audit may also involve a return we believe you should have filed, but we have no record of receiving. Sometimes the audit includes or is based on information obtained from other sources. It takes place solely within the Department of Taxation and Finance,

and rarely involves any face-to-face contact between the technician and the taxpayer. You are not routinely notified that a desk audit is taking place; in fact, the only way you will know about a desk audit is if we find it necessary to request more information, or if we determine that you either owe additional tax or are due a refund.

If we need more information, we will send you a letter advising you of the desk audit, and listing the specific information required. We will give you a reasonable amount of time. If we then determine that there are no changes needed, the technician will send you a letter acknowledging this and thanking you for your cooperation.

Desk audit findings

If there are any additional taxes due, you will receive a *Statement of Proposed Audit Changes* or similar document explaining the reason for the additional taxes. We will give you a reasonable amount of time to respond. The technician will analyze your response and, if appropriate, revise the findings and submit a new *Statement of Proposed Audit Changes* or similar document. If, however, the audit results in a refund, you will receive your refund with a letter of explanation unless you owe other taxes or a debt referred to the Tax Department (see the section on *Offsets*).

If you agree

If you agree with the audit findings, we will ask you to sign the *Statement of Proposed Audit Changes* or similar document. If you owe money but cannot pay in full immediately, you may be eligible for an installment payment agreement, which will allow you to spread out your payments. 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 more information to substantiate your disagreement, and return a copy of the statement to the Tax Department. The technician will analyze any additional information you submit and, if appropriate, send you a revised document.

If you still disagree with the audit findings, we will send you a *Notice of Deficiency* or *Notice of Determination* for the taxes due. At this point, you may formally appeal the audit findings through either our Bureau of Conciliation and Mediation Services, or through the independent Division of Tax Appeals, even if you have previously written to us and objected to the position taken in the notice of audit adjustments you received. You must generally file your appeal within 90 days of the date the notice was issued. The notice will inform you of the last date by which you must file your appeal.

To stop the accrual of additional penalties and interest, you may first pay any tax due, and then make a claim for refund within the time applicable to the tax involved. If we deny your claim completely or partially, you may then choose to appeal to the Bureau of Conciliation and Mediation Services, or to the Division of Tax Appeals, within the applicable statutory period.

Estate tax appeal rights

You may protest a *Notice of Deficiency* or the formal denial of an estate tax refund claim by filing a *Request for Conciliation Conference* with the Bureau of Conciliation and Mediation Services (see next page), 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 Order*, you must file a *Notice of Petition* and a *Verified Petition* with the Surrogate's Court of the county having jurisdiction over the estate, if you wish to pursue a court action. The petition must be in writing, and must specifically indicate what actions you are protesting.

You must complete and file the petition 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.

If you file a protest, you must file a copy of the petition at the same time with the Commissioner of Taxation and Finance. Mail it to:

**COMMISSIONER OF TAXATION AND FINANCE
OFFICE OF COUNSEL
BANKRUPTCY, ESTATES, AND COLLECTION UNIT
BLDG 9, ROOM 100
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Claims for refund

Most often, income tax refunds result from a taxpayer's overpayment of withholding or estimated tax, and the taxpayer usually claims the refund when filing an annual income tax return. We generate these refunds as part of the initial processing of the filed return.

Refunds may arise from any tax type. After filing an original return, a taxpayer may discover that he or she overlooked a credit, deduction, or exemption. For income tax and corporation tax, the taxpayer must file an amended return to claim the refund. For most other tax types, a taxpayer must submit a refund claim together with documentation substantiating the erroneous tax payment or overpayment.

If during the course of an audit, assessment, collection, or enforcement proceeding, we discover an overpayment of tax made by the taxpayer, we must disclose that to the taxpayer. You have 120 days from that date to make a claim for refund or credit. If you don't make the claim within the 120-day period, you lose the right to claim the refund or credit, unless another provision of law provides for a later time to make the claim. However, we are not required to disclose an overpayment, pay a refund, or grant a credit if, at the time of discovery, the period was closed due to the statute of limitations.

Generally, if we don't issue your refund within a specified period of time, we must pay you interest. For example, we must add interest to the amount of your personal income tax refund, if we don't issue the refund within 45 days of the due date of your return or the date you filed, whichever is later.

We may approve a claim for refund for the amount requested, or adjust or deny it. If approved, you will receive a refund for the overpaid tax, plus any applicable interest. If adjusted, you will receive an amount higher or lower than you requested, and an explanation of the adjustment(s). If we deny your claim fully or partially, we will send written notification to explain any protest rights you may have.

Note: If you owe other taxes or a debt to us, to another state agency, to the IRS, to New York City, or to another state, all or part of your refund may be paid to them. We will notify you of this *refund offset*. If you have any questions about a debt not owed to us, contact the other agency, the IRS, New York City, or the other state directly. (See the section on *Offsets*.)

If you disagree with the adjustment or disallowance of a refund, you may submit more information to substantiate your position. If you have received a *Notice of Disallowance*, you may request a conciliation conference with the Bureau of Conciliation and Mediation Services, or file a petition with the Division of Tax Appeals, within the time indicated on the notice. If you have received a *Notice of Disallowance* and submitted more information, but are still not satisfied with the results or have not received a response from us close to the expiration of the time to request a conciliation conference or to file a petition, you may do so within the time indicated on the *Notice of Disallowance*. For income and corporation taxes, you must file the request or petition within two years from the date we mailed the *Notice of Disallowance*. Other taxes have different time frames to request a conciliation conference or petition for a hearing. For example, if we deny a claim for refund of sales taxes, you must file a request or petition within 90 days of the date the claim is denied. After you file a request or petition, you have the same options as described in *Your right to protest an action* section below.

There is a statute of limitations to claim refunds. For most taxes, you must file amended returns, or other claims for refund, within three years of the date the original return was due or filed, or within two years of the date you paid the tax, whichever is later.

If you didn't file a return, then you must make the claim for refund within two years of the date you paid the tax.

If you file an amended return or claim for refund on an income, corporation, or sales tax return within the three-year period, the allowable refund may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim, plus the period of any extension of time for filing the return. If you file the amended return or claim within the two-year period, the allowable refund may not exceed the portion of the tax paid within the two-year period immediately preceding the claim for refund.

You may file an amended return for income, estate, or corporation tax, or file a claim for refund, beyond the periods mentioned above if the refund is attributable to a reported federal change or correction that **must** be reported to New York State. You must file an amended return or a claim for refund within two years of the date that notification of the change or correction was due.

The refund claim form, return, or other method that you must use depends on the tax for which you are seeking a refund. For information on the applicable time limits within which you must make your claim for refund, and to obtain the appropriate forms, see *Need help?*

Penalties and interest

The three most common reasons for penalties are (1) late filing, (2) overdue taxes, and (3) underpayment of estimated tax. In the simplest terms, avoiding penalties and interest is a matter of filing your tax returns and paying the correct amount of taxes on time. If you are unclear about any of your tax

responsibilities, use the resources described in this publication to learn more about your filing requirements.

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

Interest and any penalties continue to be added to the amount due until we receive payment. All interest is compounded daily. For the applicable interest rates, see our Web site.

Your right to protest an action

If you disagree with a final action taken by us, including:

- the issuance of a tax deficiency or determination,
- the denial of a refund claim, or
- the denial or revocation of a license, registration, or exemption certificate,

you may protest by filing Form CMS-1, *Request for Conciliation Conference*, with the Bureau of Conciliation and Mediation Services, or by filing Form TA-10, *Petition*, for a tax appeals hearing with the Division of Tax Appeals. If the disputed amount is within certain monetary limits, you may elect to have your Division of Tax Appeals hearing held in the Small Claims Unit (see *Small claims option* on page 5). For estate tax, you may protest by filing Form CMS-1 with the Bureau of Conciliation and Mediation Services, or by filing a *Notice of Petition* and *Verified Petition* with the clerk of the Surrogate's Court of the county having jurisdiction over the estate. At the same time, file a copy with the Commissioner of Taxation and Finance (see *Estate tax appeal rights*).

An estate tax action taken by us cannot be protested through a Division of Tax Appeals hearing. However, you have no formal prepayment hearing rights if you owe tax, interest, or penalty due to:

- mathematical or clerical errors on your return
- changes made to your federal return by the IRS, or
- your failure to pay all or part of the amount due as shown on your return.

You **must** file the request or petition within a certain period from the date we mailed you notice of our action, which includes the applicable time limits. These time limits are established by the Tax Law and cannot be extended. We recommend you use **certified** or **registered** mail to file your protest. For purposes of this rule, the filing date is the date the envelope containing the request or petition is postmarked by the U.S. Postal Service, or the date recorded or marked as described in Internal Revenue Code section 7502 by a designated private delivery service. Publication 55, *Designated Private Delivery Services*, lists the private delivery services approved for this purpose.

You may appear on your own behalf, or you may have an authorized representative present your case for review. An authorized representative must have a power of attorney from you in order to appear on your behalf. See *Need help?* if you need to obtain forms.

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 send you a proposed resolution in the form of a consent. If you indicate acceptance

by signing and returning the consent within 15 days, the protest will be concluded. If you do not return the consent within 15 days, the conciliation conference will be deemed concluded. The conferee will then issue a conciliation order within 30 days. This order will be binding **unless** you file a petition for a hearing with the Division of Tax Appeals (or in estate tax cases, file a *Notice of Petition* and a *Verified Petition* with the Surrogate's Court of the county having jurisdiction over the estate) within 90 days after the conciliation order is issued.

Conferences are not available to distributors, importing transporters, terminal operators, or petroleum businesses where the issue is an increase in the amount of a bond or other security. Only the Division of Tax Appeals may handle these situations.

You may request a conciliation conference by filing Form CMS-1, *Request for Conciliation Conference*, with the Bureau of Conciliation and Mediation Services (see *Need help?*). You may also write to:

**NYS TAX DEPARTMENT
BUREAU OF CONCILIATION & MEDIATION SERVICES
W A HARRIMAN CAMPUS
ALBANY NY 12227**

Tax appeals hearing

To request a tax appeals hearing, you must file a petition with the Division of Tax Appeals. The petition must be in writing and must specifically indicate what actions are being protested.

The hearing is an adversary proceeding before an impartial administrative law judge. The hearing will be recorded stenographically. After the hearing, the administrative law judge will issue a determination, which will finally decide the matter(s) in dispute **unless** either you or the department requests review of the decision by the Tax Appeals Tribunal. If that happens, the Tribunal will review the record of hearing and any additional oral or written arguments, and will issue a decision affirming, reversing, or modifying the judge's determination, or will refer the matter back to the administrative law judge for further hearing.

Court review

If you do not agree with the Tax Appeals Tribunal's decision, you may seek a court review. There are time limits within which you may appeal for court review (generally, within four months from when the Tax Appeals Tribunal serves you notice of the decision, by certified mail or personal service). For some taxes, you must pay the tax, interest, and penalty, or post a bond for this amount, plus court costs, when you file an appeal for a court review.

Small claims option

If the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure of the Tax Appeals Tribunal* (a copy of the rules that you will receive with the petition forms), you may elect to have your hearing held in the Small Claims Unit of the Division of Tax Appeals. An impartial presiding officer conducts the small claims hearing very informally. The presiding officer's determination is conclusive and is not subject to review by any other unit in the Division of Tax Appeals, the Tax Appeals Tribunal, or by any court in the state.

You may request a tax appeals hearing by filing Form TA-10, *Petition*. Petition forms and the *Rules of Practice and Procedure of the Tax Appeals Tribunal* are available on the Division of Tax Appeals and Tax Appeals Tribunal's Web site, www.dta.ny.gov, or you may request them by calling (518) 266-3000, or by writing to:

**DIVISION OF TAX APPEALS
AGENCY BUILDING 1
EMPIRE STATE PLAZA
ALBANY NY 12223**

A request for petition forms and the rules is **not** considered the filing of a petition for a hearing for purposes of the time limits, and it does not extend the time limits for filing a petition.

Relief from liability as an innocent spouse

If you file a joint return, both you and your spouse are generally responsible for the tax and any interest or penalties due on the return. This means that if one spouse does not pay the tax due, the other may have to pay it. You may qualify for relief from liability for tax on a joint return if:

- there is an understatement of tax because your spouse omitted income or claimed false deductions or credits;
- you are divorced, separated, or no longer living with your spouse; and
- given all the facts and circumstances, it would be unfair to hold you liable for the tax.

For more information, see Publication 89, *Innocent Spouse Relief*, and Form IT-285, *Request for Innocent Spouse Relief*, and its instructions.

The collection process

When your appeals rights have expired or have been exhausted, we turn collection over to our Civil Enforcement Division. Before collection proceedings begin, you will have the opportunity to pay your tax debt. In certain circumstances, you may request an installment payment agreement, which will allow you to spread out your payments.

If you are severely financially distressed, you may also decide to submit an offer in compromise. However, we will not necessarily accept the offer. For example, in most cases, you must be insolvent (your liabilities exceed your assets), and our ability to fully collect the liability must be in doubt. For more information on offers in compromise, see Publication 220, *Offer in Compromise Program*.

Installment payment agreement

If you are financially unable to pay the full amount of your liability all at once, you may qualify for an installment payment agreement. (To apply, see *Need help?*) You must establish a direct payment arrangement with your financial institution, under which monthly installment payments are automatically withdrawn and remitted to our processing bank.

Under the agreement, you may pay off your total tax liability in monthly installments. However, this does not put a cap on the total amount you owe. Until your tax liability is satisfied, interest and any penalties will continue to accrue on any unpaid balance.

To qualify for an installment payment agreement, you may be required to complete a financial statement and supply other information to substantiate your present financial condition and your present inability to make full payment. You must also file

returns and pay all future taxes as they become due. If you do not pay your new tax liabilities on time, you will be in default under the agreement. After we give you notice, we may then resume collection action on the liability under the payment agreement, or we may modify or terminate the agreement.

Whether or not you enter into a payment agreement, we may also file a tax warrant with the appropriate County Clerk and the Secretary of State, to ensure our priority over your subsequent creditors.

We may terminate an installment payment agreement at any time without notice, if we believe collection of the tax is in jeopardy. However, we may terminate or modify an installment payment agreement only upon at least 30 days prior notice, explaining the reason, in the following situations:

- if the information you supplied before entering into the agreement is found to be inaccurate or incomplete;
- if your financial condition changes significantly;
- if you fail to pay an installment payment or any other tax liability when due; or
- if you fail to supply updated information on your financial condition when requested.

If you do not satisfy your full tax liability or negotiate an installment payment agreement, or if we review, withdraw, or reject an offer in compromise, we may use any or all of the following activities to collect your tax liability.

Tax warrant

A tax warrant is the equivalent of a legal judgment against you, and creates a lien against your real and personal property. The tax warrant is a public record on file with your County Clerk's office and with the Secretary of State. It publicly acknowledges that you owe New York State taxes, and may adversely affect your credit rating. It may make it difficult for you to get a loan, or buy or sell real property. A warrant remains on file with the County Clerk and the Secretary of State until the tax liability is satisfied or the warrant expires.

A filed tax warrant secures the state as a lienholder of your personal and real property, and empowers us to use certain collection procedures.

Levy

A levy is a legal seizure of your property. Before any tax is collected by levy, we provide you with a written notice, and a notice of the types of property that are exempt from levy. Most frequently, a levy is made on bank accounts, and requires a bank to remove money from your account and send it to us. A levy can also be made on money that any third party owes you, such as a loan or rent owed to you. If you are a business taxpayer, a levy can be made on the cash in your register. Property will not be levied on if we estimate that the expenses to levy and sell the property are greater than the expected sale proceeds.

Income executions

An income execution is a type of levy that may be issued against your wages. We will ask you to pay voluntarily up to 10% of your gross wages each time you are paid. If you don't make voluntary payments, we will have your employer automatically deduct up to 10% of your gross wages directly out of your paycheck. The income execution remains in effect until the outstanding tax liability is satisfied.

Seizures and sales

Your real or personal property that is not exempt by law may be seized and sold at a tax auction. We will initiate a seizure only if we believe that the proceeds will at least cover the estimated expenses.

During a seizure, collection agents may have the locks changed at your place of business, denying you access to your place of business and your business assets. Alternatively, agents may remove all of the merchandise at your business and store it elsewhere until the sale.

After a seizure, we will advise you of the date of the intended sale. At any time before the sale begins, we will release the property and return it to you if you fully pay the tax, penalty, and interest owed, along with the expenses we incurred in the seizure and the preparation for the sale.

You have the right to request that any seized property be sold within 60 days of the request, or within some longer specified period. We will honor your request, unless it is in the state's best interest to retain the property for a longer period, in which case we will notify you.

We will sell your property for the fair market value in an auction sale, in accordance with the Civil Practice Laws and Rules, taking into account the condition of the property, the type of sale, and anticipated expenses.

Once your assets are sold at public auction, we will send you an accounting of the disbursement of the sale proceeds. If the proceeds exceed your debt and our expenses, we will return the surplus to you.

Offsets

Any payment the state may owe you for goods or services you sold or provided to any state agency or instrumentality may be withheld, and instead applied against any tax liability you owe to the state. Your payment may instead be automatically diverted to us and applied against your existing tax liability. If any payment due you is the subject of this kind of offset, we will send you prior written notification.

In addition, under certain circumstances, any New York State tax refund due you may be offset to pay unpaid tax liabilities, or it may be sent to another state agency, the IRS, New York City, or another state to which you owe money or taxes. The other state agency, the IRS, New York City, or the other state will first notify you and then apply your refund to your debt.

If you have a past due and clearly enforceable New York State, New York City, or Yonkers income tax debt, it will be referred to the U.S. Department of the Treasury Offset Program. Your federal income tax refund will be applied to your New York State tax debt, up to the amount you owe.

Refund of nonobligated spouse

If you filed a joint income tax return and you're receiving a refund, we may use the refund to pay your spouse's tax debts or other debts owed to a New York State agency. To avoid this, complete Form IT-280, *Nonobligated Spouse Allocation*, and do one of the following:

- include the form with your income tax return, **or**
- file the form within ten days of the notice from us that the refund will be used to offset other debts.

Form IT-280 does not allow you to disclaim your spouse's debts to the IRS, or tax debts owed to another state.

Release of levy

We will release a levy on all or part of your property, and send you notice of the release, if:

- you pay the underlying liability, or it becomes unenforceable by lapse of time;
- releasing the levy will facilitate collection of the liability;
- you enter into an installment payment agreement that specifically provides for release of the levy;
- the fair market value of the seized property exceeds your tax liability, and release of part of the property can be made without hindering collection of your liability; or
- we determine that the levy is creating an economic hardship due to your financial condition.

If we seize property essential to your trade or business, we will determine whether the property can be released on the grounds stated above. If we release the levy on your property, we are not prohibited from future levy of the property if it is necessary to collect your tax liability.

If property is wrongfully levied on, we may return the property seized, money equal to its fair market value, or the amount of money seized, with interest.

Responsible person assessments

For taxes such as sales and use tax, withholding tax, and the motor fuel excise tax, so-called *responsible persons* of a business may be held personally liable for the business debts. You may be considered a responsible person if you are an officer, director, or employee of a corporation or dissolved corporation, or employee of a partnership or sole proprietorship who was under a duty to act for the business to comply with the relevant provisions of the Tax Law.

Factors that will be considered in determining whether you are under a duty to act on behalf of a business include whether you sign the tax returns or maintain the books or records for the business, or are responsible for the management of the business. Under certain circumstances, you may be issued a responsible person assessment even if you are not under a duty to act for the business. For example, for sales and use, and motor fuel excise taxes, a responsible person assessment may be issued against you if you are a member of a partnership, whether or not you have a duty to act on behalf of the partnership.

If we issue a responsible person assessment against you and you do not agree with it, you have 90 days from its issuance to appeal, by either requesting a conciliation conference, or petitioning for a Division of Tax Appeals hearing. The appeal entitles you to a hearing to present any information you may have to refute the assessment. A full explanation of your rights to protest an assessment will be included with the original assessment document. For sales and use taxes only, you will be considered to have appealed if your business requests a conciliation conference, or petitions for a tax appeals hearing for the same tax liability. However, if you are not certain that the business has appealed on time, and you wish to appeal the assessment, you should request your own conciliation conference or petition for a tax appeals hearing.

Once a responsible person assessment is final, we can use all collection methods available against the responsible person's assets. You can be personally assessed for the full amount of

the tax the business owes, even if there are other entities or persons involved who may be similarly assessed. In most cases, responsible person tax debts cannot be discharged by bankruptcy of the business.

Estate tax liability of executors and transferees

If you're the executor or administrator of an estate and you distribute assets to a beneficiary of the estate, or pay any debt owed by the estate before paying the New York estate tax, you may be held personally liable for unpaid estate tax. You will continue to be liable until either the estate tax is paid in full or the department authorizes a release of estate tax lien. In addition, if you received property from the estate as a beneficiary, you may be held personally liable for the unpaid estate tax up to the value of property received. However, this doesn't include property jointly held by the decedent and surviving spouse as the only tenants (owners).

Trust accounts

If you are a business taxpayer owing sales and use taxes or withholding taxes, we may require you to establish a trust account with a financial institution, for depositing taxes as they are collected from customers, or withheld from employee wages. The trust account ensures that the taxes due are available when the tax returns are due.

We will require you to set up a trust account when your past performance indicates chronic tax delinquencies.

Revocation or suspension of *Certificate of Authority*

We may revoke or suspend your *Certificate of Authority* to collect sales and use taxes for willful failure to comply with certain requirements of the Tax Law, such as willfully failing to file a return or to pay tax. If your *Certificate* is revoked or suspended, you will be prohibited from engaging in any business in New York State for which a *Certificate* is required. If you try to remain in business with a revoked or a suspended certificate, or start a new business without a required certificate, civil and criminal penalties may be imposed.

If we institute a *Certificate of Authority* revocation or suspension proceeding, we will notify you of the proceeding and of your rights during each step of the process. The process may be stopped at any time if circumstances warrant it, such as if you satisfy your liability.

Representation during a collection activity

You may represent yourself, or designate another person to represent you. If your representative contacts us without you, he or she must file Form POA-1, *Power of Attorney*, beforehand. You can get power of attorney forms by downloading them from our Web site or by calling us (see *Need help?*).

Licenses and collateral

Your right to engage in certain businesses (for example, terminal operator) may be curtailed by cancellation or suspension of your license if you don't pay taxes. Any bond or other collateral you may have posted for issuance of a license may be liquidated and applied to your tax debt. If a bond is canceled, you must obtain a new bond before you can resume the business activities for which a bond is required.

Resolving a problem or filing a complaint

If you have a problem with the Tax Department, which you have not been able to resolve through normal channels, or if for any reason, you have a complaint about us call (518) 457-5181.

Our representatives will, depending upon the nature of your complaint, either assist you in resolving the matter, or refer your complaint for further investigation and analysis.

Need help?

Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Business Tax Information Center: (518) 457-5342

Estate Tax Information Center: (518) 457-5387

Personal Income Tax Information Center: (518) 457-5181

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

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, call the information center.