

New Jersey Conference and Appeals Procedures: The Surety Process

Collection of Taxes while Protest or Appeal is Pending

Both before and after adoption of the *Taxpayers' Bill of Rights* (July 1, 1993), the Director of the Division of Taxation has had the right to pursue collection or otherwise secure protested tax liabilities while a finding or assessment was being protested to the Director. The *Taxpayers' Bill of Rights* did however impose certain restrictions on the Director as to when security could be required.

Basically, the *Taxpayers' Bill of Rights* added the following provision to the statutory provisions dealing with collection or surety demands while taxpayers' administrative protests are pending against findings or assessments imposed by the Division (N.J.S.A. 54:49-18):

b. Except in the case of an arbitrary assessment pursuant to R.S. 54:49-5 or R.S. 54:49-7, no security shall be required for an amount in controversy of less than \$10,000. Contested assessments of \$10,000 or more shall not require security unless the Director determines that there is a substantial risk of the taxpayer's failure or inability to pay the liability, based on the compliance history and financial condition of the taxpayer.

The *Conference and Appeals Branch* has within its' protest review process a procedure that will identify taxpayers who are required to provide security in order to stay the collection process. The Director shall immediately stay all collection activity relative to the protested tax liability upon the furnishing of the security required or where otherwise required by law.

Consistent with the relevant statutes and regulations (N.J.A.C. 18:32-1A-1.8), the *Conference and Appeals Branch* will contact affected taxpayers and/or their representatives in writing advising them that the Director of the Division of Taxation requests:

- (1) That the taxpayer pay to the Division of Taxation the tax, penalty and/or interest assessed; or
- (2) Furnish the Division with a *Surety Bond* subject to the approval of the Director; or
- (3) Furnish the Division with a *Letter of Credit* subject to the approval of the Director.

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Who Will Be Contacted?

- Security shall be required in the case of a protest to the Director of any liability consisting in whole or in part or arbitrary or estimated assessments.
- Security may be required in the case of any contested liability of \$10,000 or more including penalties and interest (other than an arbitrary or estimated assessment) where the Director determines that there is substantial risk of the taxpayer's failure or inability to pay a liability based on the compliance history and financial condition of the taxpayer.
 - “*Compliance History*” is determined based upon any and all information obtained and/or maintained by the Director with respect to any State tax accounts of the taxpayer, including, but not limited to, information that the taxpayer has under reported or failed to report income.
 - “*Financial Condition*” is determined based upon any and all information that has a potential impact on the taxpayer's present ability to pay the assessed taxes, including but not limited to factors set forth at N.J.A.C. 18:32-1.8.
- No security shall be required in the case of any contested liability of less than \$10,000 including penalties and interest (other than an arbitrary or estimated assessment).

What Happens If A Taxpayer Fails to Comply?

Absent payment or the requested security, no stay of collection is in effect. Therefore, if a taxpayer has been asked to pay and/or furnish security, and fails to do so within thirty days provided, a *Certificate of Debt* will be filed against the taxpayer in the Superior Court of New Jersey pursuant to N.J.S.A. 54:49-12. Concurrently, a “Finding of Responsible Person” may be issued, as appropriate, in cases involving trust fund taxes.

The same security rules apply to complaints filed with the Tax Court of New Jersey as apply to protests filed with the Conference and Appeals Branch.