TB-115(R) – Revised September 2, 2025
Tax: Corporation Business Tax and Sales and Use Tax

The New Jersey Division of Taxation ("Taxation") is launching a pilot mediation program ("Pilot") on October 1, 2025. Mediation will offer a new option allowing taxpayers to resolve certain types of state tax controversies with the expectation of reducing the number of protests progressing to the Conference and Appeals Branch ("CAB") and the complaints filed with the New Jersey Tax Court. The Pilot seeks to provide a vehicle for taxpayers to resolve tax controversies quickly and with finality – without incurring costs generally associated with matters brought to CAB or Tax Court. Taxation will implement the Pilot under the authority of N.J.S.A. 54:49-12.5, which provides: "The director is authorized to promulgate regulations and **take other necessary or useful measures** for the purpose of efficiently administering this act [State Uniform Procedure Law], securing the largest possible recoveries for the State, ensuring the integrity of the collection program and assuring fairness to taxpayers." (Emphasis supplied.)

Overview

Mediation involves an informal meeting between staff from Taxation's Audit Branch ("Audit") and a taxpayer and/or the taxpayer representative with a trained mediator who will guide the discussion and process. The mediator is not empowered to impose a settlement on the parties, but will actively facilitate and encourage a discussion between parties thereby offering participants an opportunity to arrive at a mutually agreeable resolution of the pending tax controversy. The assigned mediator, although employed by Taxation, will not advocate for or work to sustain Audit's position. The assigned mediator will serve as a neutral (unbiased and impartial facilitator) working to enable the opposing parties to reach a fair and equitable settlement that both parties can voluntarily accept.

The Pilot will run for 24 months from October 1, 2025, through September 30, 2027. Taxation will then analyze and evaluate the Pilot to determine its utility and effectiveness, whether the Pilot should be made permanent, and whether enabling legislation/regulations will be needed to finalize a permanent program.

Case Eligibility/Application Procedure

The Pilot will be limited to controversies involving Corporation Business Tax ("CBT") and Sales and Use Tax ("S&U"), for all business entity types. Penalties and interest associated with such controversies can also be mediated. These categories reflect the largest number of cases generally pending at CAB. The scope of the controversies may expand if the Pilot is successful and becomes permanent.

1. *Screening of Mediation Applications.* Taxation will screen Applications for Mediation (Form NJ-MED-1) to ensure that applicants are appropriate candidates and have a reasonable opportunity for resolution. Applications for Mediation will be rejected if the subject matter of the controversy is not within the above-identified approved categories. For example, applications submitted for Gross Income Tax matters will be rejected.

2. *Amount in Controversy – Dollar Threshold.* Applications for Mediation (Form NJ-MED-1) will only be approved if the amount of tax in controversy equals or exceeds $5,000, without taking into account penalties or interest.

3. *Notice of Eligibility for Mediation Process.* Taxpayers and representatives will be notified of the option to apply for mediation before a final audit determination is made. Specifically, the appropriate audit function will conduct a post-audit conference for all unagreed cases. The

mediation option will be presented in writing at each post-audit conference that may be pursued by taxpayers/representatives – subject to screening approval. Exercising the mediation option will not mean that the established statutory options with CAB or the Tax Court are waived. If the mediation is not successful, taxpayers/representatives will still have the statutory methods for relief available to them.

4. *Waiver (Consent) Requirement.* Execution of a consent to extend the statute of limitations on assessments, collections, and refunds is required, extending the statute of limitations for a total of 210 days – with an option for further extensions if needed to facilitate resolution using the mediation process. The 210 day consent allows up to 180 days for the mediation process to move forward, and an additional 30 days for the issuance of normal audit closing documents if the mediation is not successful. The 210 day consent, signed by the taxpayer/representative, must be submitted to Taxation along with the Application for Mediation – if the statute of limitations is within 210 days of expiring.

5. *Timeline for Consents/180 Days from Application of Mediation Filing Date.* For mediation to be successful, the parties are required to make a genuine effort to timely complete the mediation process through the execution of a closing agreement resolving some or all pending issues in dispute with finality. Generally, if the dispute has not been resolved within 180 days from the filing of the Application for Mediation, the mediation will be terminated by the assigned mediator – unless the parties and mediator agree to extend the mediation beyond the 180 day period. In addition, the assigned mediator will be empowered to end the mediation if the mediator determines that the parties have reached an insurmountable impasse, or where the mediator determines that one or more of the parties is mediating only for purposes of delay. When termination occurs, normal audit closing documents (i.e., assessments, billings, etc.) will be issued by Audit to taxpayers/representatives providing them full statutory protest and appeal rights and applying statutory timelines.

6. *Mediation Documents*. Taxpayers/representatives seeking to apply for mediation will submit: (a) Form NJ-MED-1 (Application for Mediation); (b) a signed consent extending the statute of limitations by 210 days – if the statute of limitations is within 210 days of expiring; and (c) Form NJ-MED-2 (Mediation Agreement). A sample of Forms NJ-MED-1 and NJ-MED-2 are available online for informational purposes only. All relevant material will be provided to eligible taxpayers/representatives at the post-audit conference along with instructions for submission. After the documents are received, the mediation administrator will notify the taxpayer/representative in writing on whether the request for mediation has been accepted or rejected within 30 calendar days. If accepted, the taxpayer/representative will receive instructions for scheduling the date and time for the mediation, which shall be in person unless otherwise agreed to by the mediator and parties.

Mediation Process – Participants, Responsibilities, and Procedures

1. *Mediator*. The mediator will facilitate a dialog between parties with the objectives of moving the discussions forward in a productive fashion, maintaining order and civility between parties, and encouraging resolution by the parties. Depending on the facts and circumstances, a Taxation mediator may have all three parties (mediator, taxpayer/representative, Audit Representative) present during a mediation session. Alternatively, the mediator may make a strategic decision, at any time in the mediation process, to keep the parties separated, with the mediator conducting separate conversations or caucuses with each party, having the mediator move back and forth between parties to facilitate practical dialogue and resolution – a form of shuttle diplomacy directed by the mediator. If the mediator believes that he/she can offer a practical solution to the controversy, the mediator may suggest it – but both parties must ultimately agree to the terms of resolution. The mediator is not empowered to impose a resolution on one or both parties. Although particular issues in the mediation may be resolved while other issues remain unresolved, the overwhelming preference and goal of the mediation process will be to resolve

all pending issues with finality – not leaving issues to be resolved later by CAB or the Tax Court.

2. *Taxpayer or Representative*. Taxpayers can represent themselves or retain professionals (e.g., attorneys, accountants, or subject matter experts) to represent or accompany them in mediation. Anyone who is entering mediation (the taxpayer or the taxpayer's representative) must have the authority to make decisions and be willing to work towards a resolution. If the taxpayer is being represented, a fully executed Form M-5008-R (Appointment of Taxpayer Representative) authorizing the representative to act on behalf of the taxpayer must be submitted. Additionally, the taxpayer/representative attending the mediation must be well informed about the facts, circumstances, and issues related to the pending controversy. The mediation option is not a way to circumvent the audit process and taxpayers/representatives should not be presenting new information or raising new issues in mediation.

3. *Audit Representatives.* Audit will be represented in the mediation by one or more individuals with direct, first-hand knowledge of the audit and matters at issue – usually the case auditor and the auditor's supervisor. Audit representatives will be authorized to resolve the controversy on behalf of the Division of Taxation. Where appropriate, Audit may include subject matter experts or reports at the mediation session. Audit will participate in the mediation session with an open mind and focus on resolving the controversy.

4. *Closing Agreements – Memorializing and Finalizing Mediation Resolution*. If an agreement in principle is reached, the terms and components of the resolution will be documented and incorporated into a formalized closing agreement (pursuant to N.J.S.A. §54:53- 1 et seq.). The closing agreement will be executed by each party with legal authority to bind and resolve tax matters with finality. The results of the mediation will not establish precedent for subsequent taxable periods for either the taxpayer or Taxation.

5. *Confidentiality of Mediation Process and Application of Uniform Mediation Act*. The Pilot is part of Taxation's process for the resolution and settlement of disputes and, as a result, all documents regarding the settlement are not admissible in any subsequent court proceedings. Specifically, nothing stated, written, or otherwise used in mediation may be used by either party in any subsequent proceeding. Such provisions for confidentiality are expressly stated in the Mediation Agreement (Form NJ-MED-2). No statements, documents, materials, or information used or disclosed during the mediation may be used by either party in later proceedings before CAB, Tax Court, or any appellate court – but statements, documents, materials, or information may be used in subsequent proceedings if such items are independently produced outside of the mediation proceeding. In addition, all parties must strictly observe all provisions of the New Jersey Uniform Mediation Act (N.J.S.A. §2A:23C et seq.).Under the Act, mediation communications are privileged and confidential and cannot be used for any other purpose. Additionally, mediators are prohibited from providing any information or offering testimony related to overseeing or participating in the mediation proceedings. The mediator's notes may not be used in subsequent proceedings and they are not subject to subpoena or public disclosure, including under New Jersey Open Public Records Act (OPRA). For more information on the privilege against disclosure, admissibility, and discovery see N.J.S.A. §2A:23C-4.

6. *Training and Impartiality of Mediators*. Mediators are statutorily required to be impartial and serve as neutrals under the New Jersey Uniform Mediation Act (N.J.S.A. 2A:23C et seq.). Each mediator in the Pilot has completed Civil Mediation Training with the New Jersey State Bar Association in a course approved by the Supreme Court of New Jersey. During the Pilot, the mediators will consist of a cadre of Taxation personnel from various functions with a variety of technical backgrounds and subject matter expertise appropriate to address tax matters arising during a mediation assignment. Where needed and appropriate, a mediator may seek technical or informational assistance from a subject matter expert within Taxation. Mediators are neutral and are required to act without bias or favoritism to either party participating in the mediation.

Administration of Pilot Mediation Program

Mediation Administrator. The Director of the Division of Taxation will appoint a mediation administrator to manage and oversee the mediation Pilot. The mediation administrator will have a designated staff, and be responsible for reviewing and processing mediation applications, overseeing the training of mediators, making mediation case assignments and providing general management of mediation cases, tracking case inventory, and overseeing and finalizing mediation resolutions, agreements and terminations. The mediation administrator will also serve as a mediator. The mediation administrator will also provide periodic written reports to the Director of Taxation on the status and progress of the Pilot. During the Pilot, there will be up to ten individuals from Taxation trained and available to serve as mediators. The specific number of mediators will depend on the level of participation in the Pilot.

More Information

General information on the New Jersey Pilot Mediation Program and answers to Frequently Asked Questions regarding the New Jersey Pilot Mediation Program, can be found online.

Revision Information

This Technical Bulletin was revised on September 2, 2025, to include links to general information and the Mediation FAQ. In addition, the *Mediation Process* and *Case Eligibility/Application Procedure* section was updated to reflect emerging procedures. We provided information in advance of launching the program to give taxpayers as much insight into the program as possible. However, as procedures are formalized, we intend to update this document as needed. There were also some minor changes made to the language throughout the technical bulletin to keep it consistent with the language in the FAQ and forms that were created to administer the program. And lastly, in an effort to streamline the technical bulletin, some information from the technical bulletin was moved to the FAQ and reworded as a question.

Note: A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.