



The New Jersey Division of Taxation (“Taxation”) will begin 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 will involve an informal meeting between Taxation representatives from Audit and a taxpayer or taxpayer representative with a trained Taxation mediator who will guide the discussion and process. The mediator will not be 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 Taxation’s position. The assigned mediator will serve as an unbiased and impartial facilitator working to enable the opposing parties to reach a fair and equitable settlement that both parties can voluntarily accept – understanding both the advantages and disadvantages of resolving the controversy.

The Pilot will run for 24 months from October 1, 2025 to September 30, 2027. Taxation will then analyze and evaluate the program to determine its utility and effectiveness, whether the program 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 the Corporate Business Tax (“CBT”) and Sales and Use Tax (“S&U”), for all business entity types. Penalties and interest associated with such controversies will 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 the program becomes permanent.

1. *Screening of Mediation Applications.* Taxation will screen Applications for Mediation to insure that applicants are appropriate candidates for mediation, and have a reasonable opportunity for resolution. Applications for Mediation will be rejected if it is determined that the application is submitted for purposes of delay, or in bad faith, where the

taxpayer or representative has been uncooperative during audit, failed to provide complete or relevant documentation during audit, or caused unreasonable delays during the audit process. Applications for Mediation will also 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 will only be approved if the amount of tax in controversy equals or exceeds \$5,000.00 without taking into account penalties or interest.
3. *Ability to Pay/Payment Plans.* Disputes involving ability to pay or involving payment plans will not be eligible for mediation. However, payment plans *are* available if a mediated settlement is reached.
4. *Notice of Eligibility for Mediation Process.* Taxpayers and representatives will be notified of having an option to apply for mediation before a final audit determination is made and communicated by Taxation. Specifically, the appropriate audit function will conduct a post-audit conference for all unagreed cases. The mediation option will be presented at each post-audit conference in writing that may be pursued by taxpayers/representatives – subject to screening approval – prior to moving on to statutorily available proceedings either at CAB or the NJ Tax Court. 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.
5. *Waiver (Consent) Requirement.* Execution of a consent to extend the statute of limitations on assessments, collections, and refunds will be 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. If Taxation accepts the Application for Mediation after screening the application, Taxation will countersign the consent and return a fully executed copy to the taxpayer/representative. If Taxation rejects the Application for Mediation, Taxation will return the consent to the taxpayer/representative unsigned, an explanation for the rejection will be provided, Audit will be notified of the application's rejection, and 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 Resolution. 180 Days from Application of Mediation Filing Date.* For mediation to be successful, the parties will be required to make a genuine, good faith 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 are acting in bad faith or for purposes of delay. When termination occurs, Audit will be notified of the termination, an explanation for the termination will be provided to the taxpayer/representative, and 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.

7. *Mediation Documents.* Taxpayers/representatives seeking to apply for mediation will submit: (a) Form NJMED (Application for Mediation); (b) a signed consent extending the statute of limitations for assessment by 210 days – if the statute of limitations is within 210 days of expiring; and (c) a contract for mediation to the Mediation Administrator. A sample of the Form NJMED, the mediation consent/waiver form, and the contract for mediation will be made part of a forthcoming FAQ along with the e-mail or mailing address for submitting these documents to Taxation. Eligible taxpayers/representatives will be provided required mediation documents at the post-audit conference with instructions for submission to the mediation administrator, who will notify the taxpayer/representative in writing on whether the request for mediation has been accepted or rejected within 30 calendar days of the receipt of the application. If accepted, the taxpayer/representative will receive instructions scheduling the date and time for the mediation, which shall be in person unless otherwise agreed to by the mediator and parties. The final contract for mediation will identify the assigned mediator and provide specific terms applicable to the mediation conference involving procedures, confidentiality, non-disclosure, good faith, and the binding and final nature of any agreement reached during the mediation.

Mediation Process – Participants, Responsibilities, and Procedures

1. *Taxation Mediator.* The mediator will facilitate a dialog between parties with the objectives of moving the mediation process 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, Division Representative) present during a mediation session. Alternatively, the Taxation mediator may make a strategic decision, at any time in the mediation process, and with the permission of the parties, 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. With the exception of scheduling and other purely administrative matters, there will be no ex-parte communications between a mediator and a single party unless both parties to the mediation agree to such an arrangement. 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 may represent themselves during mediation, or may be represented by individuals authorized to make decisions and tentatively bind the taxpayer to an agreement, which may be finalized following consultation with and approval by the client/taxpayer. Taxpayers may also be represented by individuals who have been given settlement parameters or guidance by clients. On entering mediation, the taxpayer or representative must be well informed about the facts, circumstances, and issues related to the pending controversy, and must have immediate access to representatives and/or subject matter experts possessing the necessary technical know-how to engage in an informed and meaningful mediation dialog. Taxpayers may be represented by attorneys, CPAs, accountants, subject matter experts, or other advocates. If represented, the taxpayer must submit a fully executed Form M-5008-R (Appointment of Taxpayer Representative) authorizing the representative to act on behalf of the taxpayer. The Form M-5008-R must be attached to the mediation application. Where appropriate, the taxpayer may offer memoranda from subject matter experts and other relevant documentation at the mediation session, and where possible, such information should be exchanged by the parties and provided to the mediator prior to the mediation session.
3. *Taxation's Representatives.* Taxation 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. Taxation's representatives will be authorized to resolve the controversy on behalf of the Division of Taxation. Where appropriate, Taxation may include subject matter experts or reports at the mediation session. Taxation's representatives will participate in the mediation session with an open mind and focus on resolving the controversy.
4. *Closing Agreements – Memorializing and Finalizing Mediation Resolution.* When agreement in principle is reached during the mediation process, the key terms and components of the resolution will be documented and executed by both parties and witnessed by the participating mediator. This will be followed by the execution of a formalized closing agreement (pursuant to N.J.S.A. §54:53- 1 et seq.) that will specify all material terms of the mediated agreement. The closing agreement will be executed by each party or party representative with legal authority to bind and resolve tax matters with finality. The results of the mediation will not establish precedence for subsequent taxable periods for either the taxpayer or Taxation.
5. *Confidentiality of Mediation Process and Application of Uniform Mediation Act.* The mediation program is 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 should the mediation terminate without a successful resolution. Such provisions for confidentiality

will be expressly stated in the contract for mediation. No statements, documents, materials, or information used or disclosed during the mediation may be used by either party in later proceedings before CAB, the Tax Court, or any appellate court – but such statements, documents, materials, or information may be used in subsequent proceedings if such items are independently produced outside of the mediation proceeding. Mediators will be prohibited from providing any information or offering testimony relating to overseeing or participating in mediation proceedings. The mediator’s notes may not be used in subsequent proceedings. The privilege against disclosure, admissibility, and discovery provisions of N.J.S.A. §2A:23C-4 (from New Jersey’s adopted version of the Uniform Mediation Act) will be strictly observed by Taxation for purposes of the pilot program. In addition, Taxation will strictly observe all provisions of the New Jersey Uniform Mediation Act (N.J.S.A. §2A:23C-1 thru 13) as part of the pilot program.

6. *Training and Impartiality of Mediators.* Personnel will be trained as mediators in a program offered by the NJ State Bar Association. During the pilot program, the personnel serving as 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 assistance from a subject matter expert within Taxation. Mediators will be 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 program. 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 program. During the pilot program, 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 program.

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.