



# DIVISION OF REVENUE AND TAXATION

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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## GENERAL INFORMATION REGARDING APPEALS BRANCH PROCEDURES, APPEAL RIGHTS AND PREPARATION OF PROTESTS FOR UNAGREED CASES

### GENERAL INFORMATION

The Division of Revenue and Taxation has established an administrative appeals system through which disagreements on tax matters can be settled without expensive and time-consuming court trials. The objective of the appeals system is to resolve tax controversies without litigation on a basis that is fair and impartial to both the taxpayer and the government and which fosters voluntary compliance with the tax laws.

The Technical Research and Appeals Branch is responsible for all aspects of the appellate process. The Appeals Branch affords all taxpayers who disagree with proposed changes of the examining officer and other adverse decisions made by Revenue and Taxation a prompt and independent review.

No taxpayer is required to submit a case to the Appeals Branch for consideration; appeals is at the option of the taxpayer. These appellate procedures provide an administrative opportunity to the taxpayer and Revenue and Taxation to resolve tax disputes fairly and without litigation.

Neither a taxpayer nor its authorized representative must cause any unnecessary delays in the appeals process. If a case is not handled expeditiously by the taxpayer or the taxpayer's representative, the Appeals Branch may close the case based upon the information in its possession or may dismiss the appeal and forward the tax matter for further collection activity.

### IF YOU AGREE

If you agree with the examiner's findings in the enclosed examination report, please sign the agreement form and return it with our transmittal letter. By signing, you are agreeing to the amounts shown on the form.

If the agreement shows you owe additional tax you may pay it without waiting for a bill. Include interest on the additional tax and on any penalties at the applicable rate from the due date of the return to the date of the payment.

If you do not pay the additional tax when you sign the agreement, you will receive a bill for the additional tax. Interest is charged on the additional tax from the due date of your return to the billing date. However, you will not be billed for more than 30 days interest from the date we receive your signed agreement. No further interest or penalties will be charged if you pay the amount you owe within 10 days after the billing date.

Please make your check or money order payable to the CNMI Treasury and include on the check or money order your social security number (individual tax) or employee identification number (business tax), the tax form number, and the tax period for which payment is being made. Do not send cash through the mail.

If the examination report shows a refund is due you, you should sign and return the agreement form promptly so the Division of Revenue and Taxation can quickly process the refund due.

### IF YOU DO NOT AGREE

If you decide not to agree with the examiner's findings, you have the option of requesting a meeting with the examiner or the examiner's supervisor to discuss the findings. If you still do not agree, we urge you to appeal your case to the Appeals Branch at the Division of Revenue and Taxation. Most differences can be resolved without expensive and time-consuming court trials. (Appeals conferences are not available to taxpayers whose reasons for disagreement do not come within the scope of the tax laws. For example, disagreement based solely on moral, religious, political, constitutional, conscientious, or similar grounds.)

The following general rules tell you how to appeal your case.

### APPEALS

You may appeal a Revenue and Taxation decision to the Appeals Branch. Appeals conferences are conducted in an informal manner.

If you want an appeals conference, write to the Manager of Technical Research and Appeals Branch according to the instructions in our letter to you. The appeals officer will arrange a conference at a convenient time and place. You and/or your representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level.

### TIME TO APPEAL

Taxpayers must appeal an adverse decision within thirty (30) days from the date of the adverse decision. For example, if the taxpayer disagrees with the proposed changes of an examining officer, the taxpayer must appeal the proposed changes within 30 days of the date of the 30-day letter issued to the taxpayer regarding the audit changes.

### WRITTEN PROTESTS

When you request a conference, you will also need to file a written protest with the Manager of Technical Research and Appeals. Written protest are required if as a result of an examination by a revenue agent or a revenue officer there is a proposed increase (including penalties) or decrease in tax, or claimed refund. You should send the written protest within the time limit specified in the letter you receive with the examination report. Your protest should contain:

1. Your name, address, and social security number or employer identification number,
2. A statement that you want to appeal the examination findings to the Appeals Branch,
3. The date of the letter showing the proposed changes and findings you disagree with and the reference number on the top right hand corner of the letter,
4. The tax period(s) or year(s) involved,
5. An itemized schedule of the changes with which you disagree. The taxpayer must state which items are being appealed and which items are not.
6. A statement of facts supporting your position on the issue with which you disagree, and why the item(s) is/are being appealed and
7. A statement stating the law or other authority on which you rely.

You must declare that the statement of facts under (6) is true under penalties of perjury. Do this by adding the following signed declaration:

"Under the penalties of perjury, I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and, to the best of my knowledge and belief, it is true, correct, and complete."

If your representative submits the protest for you, he or she may substitute a declaration stating:

1. That he or she prepared the protest and accompanying documents and
2. Whether he or she knows personally that the statement of facts in the protest and accompanying documents are true and correct.

An original and one copy of the protest must be mailed to the Division of Revenue and Taxation, Attention: Appeals Branch, Post Office Box 5234 CHRB, Saipan, MP 96950, or filed in person at the Revenue

and Taxation Office located on Saipan, Rota or Tinian. Sending Revenue and Taxation a facsimile protest by the deadline for filing a protest is acceptable, but all protests sent by facsimile must be immediately followed by mailing a copy of the protest and by a confirming phone call during Revenue and Taxation office hours on the first working day after the facsimile was sent to ensure receipt.

### **SUBMISSION OF ADDITIONAL DOCUMENTATION**

A taxpayer must include within the written protest all information as required by this publication. Failure to include all required information may result in the protest being rejected by the Appeals Branch and may result in the expiration of the 30-day time period. If the disputed matter involves lengthy or complex issues, the taxpayer should request additional time to submit a supplement to the written protest containing issues, legal arguments, etc, subject to the approval of the Appeals Branch. In all cases in which additional information is allowed to be introduced, such must be submitted at least 5 days prior to the conference or within the time specified by the Appeals Officer.

### **REPRESENTATION**

You may represent yourself at your appeals conference, or you may have an attorney; certified public accountant, or an individual enrolled to practice before the Internal Revenue Service represent you. Your representative must be qualified to practice before the Internal Revenue Service. If you want your representative to appear without you, you must provide a properly completed power of attorney to the Division of Revenue and Taxation before the representative can receive or inspect confidential information. Form 2848CM, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization may be used for this purpose. You can get copies of Form 2848CM from the Division of Revenue and Taxation Office.

### **APPELLATE CONFERENCE**

Upon the timely receipt of a complete written protest requesting appeals consideration, an Appeals Officer will issue a letter requesting the taxpayer to contact the Officer to arrange a mutually convenient date and time for an appeals conference. Taxpayers are given at least ten (10) days in which to respond to this letter and a conference will be scheduled as soon as possible, in most cases within one month or as time permits. The Officer will then confirm the agreed upon date and time by a subsequent letter.

The appellate conference provides the opportunity for both the taxpayer and the government to discuss candidly the merits of the case as they see them and to evaluate the applicable facts and law in order to arrive at a proposal for settlement that is mutually acceptable. Proceedings before Appeals are informal. Testimony under oath is not taken,

although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury.

Prior to the conference, the Appellate Officer will thoroughly review the case and do necessary research to prepare to discuss all issues at the conference. The Appellate Officer will identify and classify the issues in dispute, identify pertinent facts and their value, and apply the law to the facts. The taxpayer and/or authorized representative must be equally prepared for the conference.

At the conference, the Appeals Officer or the Appeals Branch Manager shall be the presiding officer and in most cases, no other Revenue and Taxation employee will be present. The Appellate Officer will allow the taxpayer to present its issues and arguments, will discuss the issues, and will then close the conference, unless settlement is discussed as indicated below. The Appellate Officer may request that the taxpayer submit additional documentation and if so, will provide a deadline for doing so.

### **NEW ISSUES**

During consideration of a case, the Appeals Branch will neither reopen an issue as to which the taxpayer has agreed nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals Branch raises a new issue, the taxpayer or the taxpayer's representative will be so advised and will be offered an opportunity for discussion prior to the taking of any formal action.

### **SETTLEMENT**

At the appeals conference, a taxpayer can make an offer(s) to the Appellate Officer to settle the case. The Appellate Officer will be prepared to discuss settlement offers at the appeals conference and will be open to making recommendations to the Government to resolve the matter in a manner that is fair and impartial to both the taxpayer and the Government. The Appeals Branch will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views. However, no settlement will be made based upon nuisance value of the case to either party. The Appellate Officer will make a recommendation to either the Secretary of Finance or the Manager of Technical Research and Appeals to accept the settlement offer. If a settlement is reached, either a Closing Agreement of a Form 870AD will be executed.

### **CLOSING PROCEDURES FOR NON-SETTLEMENT CASES**

In all cases in which a settlement is not reached, the Appellate Officer will finalize his or her review and will make a recommendation to the Manager of Technical Research and Appeals Branch or the Secretary of Finance regarding the case. If amounts are due by the taxpayer, the taxpayer

will be informed and the matter will be forwarded for any necessary collection activity, including the issuance of a Notice of Deficiency.

### **RESCHEDULE OF AND ADDITIONAL CONFERENCES**

The Appeals Branch will reschedule conferences only for good cause and only under very unusual circumstances will the Appeals Branch reschedule a conference more than one time. Any request for the rescheduling of a conference must be in writing, made prior to the scheduled conference, and must state why good cause exists to reschedule the conference.

More than one conference may be scheduled if necessary to gather all the relevant facts or to reach a settlement, but there shall be no unnecessary delays in the appeals process.

### **TAXPAYER'S RESPONSIBILITY**

Taxpayers and/or their authorized representatives are responsible for complying with all appellate procedures, properly preparing for their appeals conference, and timely responding to requests made by the Appeals Branch. Taxpayers or their representatives are responsible for raising all contested issues, properly researching all issues, and presenting all pertinent facts to the Appeals Office. Such responsibilities are necessary in order to ensure that the Appeals Branch renders a fair and reasonable recommendation to the Government.

### **APPEALS TO THE COURTS**

If you and the Division of Revenue and Taxation disagree after your conference or if you skipped our appeals system, you may take your case to the Court having jurisdiction to hear your case. These courts are independent judicial bodies and have no connection with the Department of Finance.

### **TAX COURT**

If your case involves a disagreement over whether you owe additional Northern Marianas Territorial Income Tax you may to the CNMI Superior Court sitting as the Tax Court. To do this, ask the Division of Revenue and Taxation to issue a formal letter called a "notice of deficiency". You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (150 days if addressed to you outside the CNMI), the law requires that we assess and bill you for the deficiency.

**If you discuss your case with the Division of Revenue and Taxation during the 90-day periods (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.**

The Court will schedule your case for trial. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that Court.

**NOTE:** If you do not exhaust your administrative remedies, including appeals consideration, the Court will normally request that you attempt settlement with Appeals prior to the court date.

### **CNMI SUPERIOR COURT**

If your case involves a disagreement over the Northern Marianas Territorial Income Tax or other local taxes you may seek judicial review in the Commonwealth Superior Court. With respect to local taxes other than the NMTIT, you shall have one year from the date of an adverse decision of the Secretary of Finance to institute an action for judicial review.

A taxpayer may stay collection of an assessment during the pendency of a court proceeding brought in the Commonwealth Superior Court by posting with the Secretary of Finance and continuously maintaining in effect during the pendency of the court proceeding a surety bond, property or cash satisfactory to the Secretary upon terms and conditions as may be satisfactory to him, in an amount having a value of 100% of the amount of the assessment, plus additional amounts as in the judgement of the Secretary are reasonably necessary to cover penalties, interest, and other charges as may accrue during the pendency of the court proceeding.

### **RECOVERING ADMINISTRATIVE AND LITIGATION COSTS ON NORTHERN MARIANA TERRITORIAL INCOME TAX LITIGATIONS**

You may be able to recover your litigation and administrative costs for Northern Mariana Territorial Income Tax if you are the prevailing party and if:

(1) You exhaust all administrative remedies with the Division of Revenue and Taxation which are described in **Appeals and Written Protests Publication**.

(2) Your net worth is below a certain limit (**see Net worth requirements**, later) and

(3) You meet the net worth requirement, discussed, later.

### **REASONABLE LITIGATION COSTS GENERALLY INCLUDE:**

- Reasonable amounts for court costs,
- Expenses of expert witnesses,
- The costs of any study or analysis, engineering report, test, or project which the court agreed were necessary for the preparation of your case, and
- Attorney fees that generally may not exceed \$110 per hour as modified by a cost-of-living adjustment.

### **REASONABLE ADMINISTRATIVE COSTS GENERALLY INCLUDE:**

All of the costs listed under litigation costs, except court costs, and also includes any administrative fees or similar charges made by the Division of Revenue and Taxation. Administrative costs include costs incurred on or after the earlier of the date the taxpayer receives the appeal decision letter; the date of the notice of deficiency; or the date

on which the first letter of proposed deficiency, which allows the taxpayer an opportunity for administrative review in the Division of Revenue and Taxation's Appeals Branch, is sent.

**Net worth requirements:** An individual taxpayer may be able to recover litigation and administrative costs if his or her net worth was not more than \$2,000,000 when the litigation began and/or when administrative costs become recoverable. To qualify, the net worth of the owner of an unincorporated business, or a partnership, corporation, association, unit of local government, or organization cannot be more \$7,000,000 and cannot have more than 500 employees when the litigation began.

### **PENALTY**

Whenever the Tax Court determines that the proceedings before it have been instituted or maintained by you primarily for delay or that your position in such proceedings is frivolous or groundless, a penalty not in excess of \$25,000 shall be awarded to the CNMI by the Tax Court in its decision. Other penalties may apply in other courts.

### **ADDITIONAL INFORMATION**

For additional information regarding appeals branch procedures, please contact the Technical Research and Appeals Branch, CNMI Division of Revenue and Taxation.