

NEW JERSEY DIVISION OF TAXATION WEIGHS IN ON CURRENT STATUS OF COVID DEADLINES

Hodgson Russ State and Local Tax Alert
July 1, 2021

Shortly after the pandemic hit, New Jersey put in place extensions of tax deadlines that have remained in effect for the past year. When Governor Murphy lifted the public health emergency last month, it raised the question of whether any of the tax extensions would come to an end. Because the New Jersey COVID extensions were implemented in piecemeal fashion, the answer to that question depends on which deadline is at issue.

Deadlines for Assessments

At the beginning of the pandemic, Governor Murphy issued Executive Order 103, declaring both a state of emergency (SOE) and a public health emergency (PHE). Subsequently the New Jersey Legislature acted quickly to enact a law that extended the deadline for the Division to issue state tax assessments. L. 2020, ch. 19 (eff. Apr. 14, 2020). The new legislation provides that the statute of limitations to assess New Jersey State taxes was extended “for 90 days after the conclusion of the state of emergency declared by the Governor pursuant to Executive Order No. 103.” Note the reference to the SOE (that remains in effect) and not the PHE.

The Division’s June 29, 2021 release confirms extensions remain in effect for assessments because although Governor Murphy has lifted the PHE, the SOE has not ended. According to the Division:

Assessment of Tax (P.L. 2020, c.19)

The Division has a statutorily prescribed time limit to audit and/or make assessments on tax returns (“the original assessment time period”). For most taxes, the original assessment period is within four years of the date that a tax return was filed. The original assessment period is shorter for Gross Income Tax returns, which must be assessed within three years of the date that a tax return was filed. A taxpayer may consent to an additional period of time beyond the three or four year period (“the consent period”). The law extended both the original assessment period and the consent period by an additional 90 days after the State of Emergency has ended (“the extended assessment time period”).

Attorneys

Paul Baldwin Jr.
Open Weaver Banks
Richard Campbell
Katherine Cauley
Thomas Collura
Paul Comeau
William Comiskey
Arielle Doolittle
Christopher Doyle
Catherine Eberl
Joseph Endres
Debra Herman
Daniel Kelly
Joshua Lawrence
Timothy Noonan
Elizabeth Pascal
K. Craig Reilly
Emma Savino

Practices & Industries

State & Local Tax

NEW JERSEY DIVISION OF TAXATION WEIGHS IN ON CURRENT STATUS OF COVID DEADLINES

Therefore, if either the original assessment period or the consent period ends on or after April 14, 2020, the Division can make an assessment on or before the expiration of the extended assessment period.

Deadlines for Refund Claims

Taxpayer refund claims were not addressed in the legislation that gave the Division more time to issue assessments. Separately, on July 31, 2020, Governor Murphy issued Executive Order 170 to provide extensions for dozens of New Jersey deadlines. Among them, the statute of limitations for claiming refunds of Gross Income Tax, Sales and Use Tax, and Corporation Business Tax were all extended until 90 days after the last day of the PHE.

Since Governor Murphy lifted the PHE last month, does that mean the 90-day clock has started to run on refund claims that were under extension? To answer that question it is necessary to look at another piece of legislation that was enacted last month to resolve disputes between New Jersey's Governor and Legislature over how much control the Governor has over pandemic-related issues. On June 4, 2021, Governor Murphy signed into law Assembly Bill 5820 (A5820), which provides for the expiration of all executive orders except for a small list that includes Executive Order 170 (the executive order extending the deadlines for refund claims). The executive orders preserved by A5820 remain in effect until January 1, 2022. However, A5820 also provides that the Governor shall have the ability to revoke or modify Executive Order 170 prior to January 1, 2022.

The Division's June 29, 2021 release concludes that refund deadlines are extended until January 1, 2022 (with a caveat). According to the Division:

Extension of Time to File a Claim for a Refund or Credit (EO-170)

The statutory deadlines for filing a claim for a refund or credit under the Sales and Use Tax Act, the Gross Income Tax Act, and the State Uniform Tax Procedure Law, have been extended until January 1, 2022, unless EO-170 is revoked or modified by the Governor. The extension is available if the statutory deadline for filing a claim for a refund or credit was on or after March 9, 2020, and before January 1, 2022, unless EO-170 is revoked or modified by the Governor.

If Executive Order 170 happened to be revoked or modified by the Governor prior to January 1, 2022 there could be confusion regarding the refund deadline extension and we would expect the Governor and Legislature to provide clear guidance to taxpayers on any new deadline for refund claims extended by COVID.

Deadlines for Administrative Appeals

Unlike the assessment and refund deadline, the deadline for administrative appeals to the New Jersey Conference and Appeals Branch (CAB) was set by a March 19, 2020 order of the New Jersey Supreme Court to 30 days after the SOE has ended.

The Division's June 29, 2021 release concludes that the extension remains in effect for appeals to CAB because the SOE has not ended. According to the Division:

NEW JERSEY DIVISION OF TAXATION WEIGHS IN ON CURRENT STATUS OF COVID DEADLINES

Conference and Appeals (Supreme Court of NJ Order)

On March 19, 2020, the Chief Justice of the NJ Supreme Court extended the 90-day time frame to file an administrative protest. If the 90-day time frame to file a protest expired after March 19, 2020, taxpayers have until 30 days after the State of Emergency has ended to file a protest with the Conference and Appeals Branch.

Deadlines for Tax Court Petitions

The Division's June 29, 2021 release does not mention deadlines to challenge an assessment or refund denial in New Jersey Tax Court. Tax Court petition deadlines were also extended by the same New Jersey Supreme Court order that extended the CAB deadline. According to the March 19, 2020 Order, state tax appeal filing deadlines to the Tax Court, to the extent those deadlines had not already passed, are extended until 30 days following the end of the SOE. Accordingly, the extension remains in effect for Tax Court appeals.

If you would like more information about the above New Jersey tax issues, contact [Open Weaver Banks](#) (646.218.7524), [Debra Silverman Herman](#) (646.218.7532) or [Craig Reilly](#) (716.848.1582).