

## Publications

### New Jersey's Tax Mediation Pilot Program

#### ALERT

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*Hodgson Russ State & Local Tax Alert*

Starting in October 2025, the New Jersey Division of Taxation is offering business taxpayers a new option for resolving audit disputes. Beginning October 1, 2025, and running through September 30, 2027, the Division is testing a pilot mediation program. The Division has issued a technical bulletin and FAQ page explaining how the mediation program is intended to work.

#### **Key Points**

- The mediation program is only available for tax controversies involving Corporate Business Tax or Sales & Use Tax, and the amount in controversy must be at least \$5,000 (excluding any penalties and interest).
- Before a final audit determination is made, a post-audit conference will be held, at which time taxpayers will be notified in writing if they are eligible to participate in the mediation option.
- Taxpayers who want to participate in mediation must first submit an application (Form NJ-MED-1). The Division will review the application to ensure that applicants are appropriate candidates and have a reasonable opportunity for resolution.
- If the statute of limitations on assessment is within 210 days of expiring at the time the taxpayer applies for mediation, the taxpayer must execute a consent to extend the statute of limitations on assessments, collections, and refunds for a total of 210 days – with an option for further extensions if needed to facilitate resolution using the mediation process.
- Once the application has been reviewed, a mediation administrator will provide written notification of whether the application has been accepted or rejected. Taxpayers accepted into mediation will enter

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into a mediation agreement with the Division.

- All taxpayer information disclosed during the mediation will remain confidential and cannot be used in later proceedings or future audits. Specifically, nothing stated, written, or otherwise used in mediation may be used by either party in any subsequent proceeding. Such provisions for confidentiality will be expressly stated in the mediation agreement.
- The mediation has a 180-day limit from the date that the mediation application is filed. At the end of the 180-day period, the mediator has the option to terminate the mediation.
- If the parties reach an agreement during the mediation, the Division will enter into a closing agreement with the taxpayer.
- If the mediation is not successful, taxpayers will still have the option to file an appeal with the Conference and Appeals Branch or the New Jersey Tax Court.
- Interest will continue to accrue during the mediation process.

### **Who are the Mediators?**

Although mediators are employees of the Division, the Division advises in its bulletin and FAQ that under the New Jersey Uniform Mediation Act, the mediators are required to be impartial. The Division further advises that each mediator in the pilot has completed Civil Mediation Training with the New Jersey State Bar Association. According to the bulletin, "where needed and appropriate, a mediator may seek technical or informational assistance from a subject matter expert" within the Division.

### **What Does the Mediation Process Look Like?**

The mediator's job is to facilitate a dialogue between parties with the goal of encouraging resolution by the parties. During the mediation process, the Division's audit team will be represented by one or more individuals with direct, first-hand knowledge of the audit, and may also include subject matter experts. Taxpayers can represent themselves or retain professionals to represent or accompany them in mediation. The mediator has the option to include all the parties in a mediation session or to keep the parties separated, with the mediator conducting separate conversations with each party.

If the mediator identifies a practical solution to the controversy, the mediator may suggest it – but both parties must ultimately agree to the terms of any resolution. The mediator is not empowered to impose a resolution.

### **Mediation Mindset**

In its announcements, the Division explains, multiple times, who is best suited for mediation. Specifically, the FAQs provide that it is important to remember "that mediation is not a process in which you bring your case before a mediator and expect a 'win.' The process is only effective when the parties work together to resolve the controversy." Further, the announcement page of the Division's website provides that:

Cases are resolved in mediation only if the parties can agree on an outcome. Since all parties come to mediation with the power to walk away at any stage of the process, we encourage participants not to come

to the mediation with a predetermined "bottom line." While it is understood that there will be factors that will limit all participants' flexibility, establishing absolute boundaries in advance could limit your success in the mediation.

Hodgson Russ is ready and available to assist taxpayers in determining whether mediation is the right choice and to represent taxpayers in any New Jersey tax matters.

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