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# Determining Objections to Assessments of Levy Liability Procedure

## 1. Purpose

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Section 86 of the *Taxation Administration Act 1996* (Tax Act) enables a taxpayer who is dissatisfied with their assessed liability for a specific assessment period to lodge a written objection. In respect of passenger service levy assessments, Schedule 3, part 3 of the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 (the Regulation) sets out the legislative requirements for objections to levy liability in conjunction with provisions in Part 10 of the Tax Act.

This procedure sets out how a taxpayer's objection to an assessment of levy liability is to be considered.

## 2. Mandatory requirements

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### 2.1 Who can consider an objection

Section 91(3) of the Tax Act requires the person who considers an objection (Assessor) to be a different person from, and not subordinate to, the person who made the assessment or decision against which the objection is lodged (Initial Assessor).

Most initial assessments of liability for a particular assessment period will be automatically calculated in Salesforce. Objections to these automatic assessments can be determined by the Manager, Authorisation and Levy Administration.

As a manually calculated initial assessment will have been approved by the Manager, Authorisation and Levy Administration, any objection to such assessments will be determined by the Manager, Sanctions.

### 2.2 Prerequisites for a valid objection

An objection must be in writing: section 87 of the Tax Act. Service providers who are registered taxpayers are able to lodge an objection online via the Point to Point Industry Portal.

Prior to considering a written objection, an Assessor will review the objection to ensure the following:

- the objection identifies fully and in detail one of the limited grounds set out in Schedule 3 clause 10 or clause 11 of the Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017 (the Regulation)
- the assessment amount and assessment period to which the objection relates, is specified
- the objection has been lodged within time or special circumstances have been established to permit lodgement out of time
- documentary evidence supporting the stated grounds has been provided.

### 2.2.1 Grounds upon which an Objection can be lodged

A taxpayer can only lodge an objection in limited circumstances; namely

- there was a mistake in the return which resulted in a higher assessed liability than would have been assessed if the mistake had not been made: clause 10(1)(a) Schedule 3 of the Regulation
- the assessment was based on an estimate and has resulted in a higher assessed liability than would have been assessed if the assessment was determined on the basis of the actual passenger service transactions: clause 10(1)(b) Schedule 3 of the Regulation
- the levy amount was collected by a person and the amount was not paid by that person to the taxpayer or otherwise as agreed with the taxpayer, and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid: clause 11(1) Schedule 3 of the Regulation
- the taxpayer gave the person reasonable directions as to the collection of a levy amount and the amount was not collected by the person as directed by the taxpayer and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid: clause 11(1A) Schedule 3 of the Regulation.

### 2.2.2 When an objection cannot be lodged

Section 86(2) of the Tax Act provides that an objection cannot be lodged in respect to the following:

- a compromise assessment
- a decision to not make a compromise assessment
- a determination of an objection, including such part of any reassessment that gives effect to the determination that is allowed in whole or part (although this does not preclude the taxpayer exercising other appeal rights through the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court of NSW).
- a decision to assess the taxpayer's liability that does not have the effect of increasing that liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the initial assessment
- the lodgement of an objection out of time that does not establish special circumstances for the late lodgement.

In the case of third party collection of the levy amount, clause 11(1B) of the Regulation also precludes an objection seeking a waiver of, or reduction in, the levy amount that is in respect of a third party who has been the subject of a previous objection from the same taxpayer.

### 2.2.3 Time in which to lodge an Objection

An objection is to be lodged within 30 days of the Notice of Assessment if:

- a mistake was made in the return
- an estimate-based assessment is higher than what would have been determined if the assessment had been based on actual passenger service transactions.

An objection is to be lodged within 60 days of the Notice of Assessment if:

- the levy amount was collected by a driver, affiliated provider or other person and the amount was not paid by that person to the taxpayer or otherwise as agreed with the taxpayer and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid
- the taxpayer gave a driver, affiliated provider or other person reasonable directions as to the collection of a levy amount and the amount was not collected by the person as directed by the taxpayer and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid.

#### **2.2.4 Objections lodged out of time**

Objections are able to be lodged out of time if the taxpayer is able to establish special circumstances such as:

- a serious illness or other personal emergency affecting the service provider's or person(s) responsible for the service provider's returns
- a failure of computing or other systems, including loss of data, affecting the service provider's ability to make the objection
- an unforeseeable occurrence or circumstance outside the service provider's control.

The taxpayer will need to provide evidence to support the claim of special circumstances.

If an objection has been lodged out of time, an Assessor must determine, in accordance with paragraph 2.2.4, whether the special circumstances claimed by the taxpayer can be established based on evidence submitted in support thereof, prior to considering whether the ground for the objection had been out in accordance with paragraph 2.6 below.

### **2.3 Time to consider the objection**

An objection must be considered and a determination made to either allow the objection in whole or in part, or to disallow the objection within 90 days from the date of its lodgement: section 91(1) of the Tax Act.

An Assessor may suspend consideration of the objection for any period of time during which the taxpayer, or another person with information relevant to the objection, fails to provide the information if it has been requested by the Assessor: section 92 of the Tax Act.

If determination is to be suspended, the objector must be given written notice of any suspension. Once the requested information is received, the time for consideration of the objection can be reactivated.

If a determination on the objection is not made within 90 days (not including any period of suspension), the taxpayer has a right to seek a review in NCAT or the Supreme Court.

### **2.4 Supporting documents**

Clause 12(b) of Schedule 3 of the Regulation requires an objection to contain relevant records supporting the objection such as trip data, vehicle records, fare calculation device data and financial statements.

#### **2.4.1 Evidence to support an objection in the event of a mistake in the return**

Where an objection is made pursuant to clause 10(1)(a) of Schedule 3 of the Regulation asserting a mistake in the return which resulted in a higher assessed liability than would have been assessed if the mistake had not been made, the following evidence is required:

- a declaration outlining the mistake made on the original return *and*
- records or other evidence of the correct number passenger service transactions for the assessment period.

#### **2.4.2 Evidence to support an objection to an estimated assessment**

If the objection is made pursuant to clause 10(1)(b) of Schedule 3 of the Regulation in respect to an assessment based on an estimated passenger service count by an Assessor that was higher than if the assessment had been determined on the basis of the actual passenger service transaction, the following evidence is required:

- records or other evidence that the number of passenger service transactions for the assessment period were lower than the estimate used for the assessment.

To assist in determining an objection on this ground, the taxpayer can be required to lodge a passenger service transactions return for the relevant period: clause 10(2) Schedule 3 of the Regulation.

#### **2.4.3 Evidence to support an objection if a person who collected a levy amount but did not pay it to the taxpayer (or otherwise as agreed)**

If the objection is made pursuant to clause 11(1) of Schedule 3 of the Regulation seeking a reduction or waiver of liability on the basis that the levy amount was collected by a driver, affiliated provider or other person, and the amount was not paid by that person to the taxpayer or otherwise as agreed with the taxpayer, and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid, the following types of evidence are required:

- (i) Evidence that the person was in a position to collect a levy amount relating to the passenger service transactions for the assessment period on behalf of the taxpayer – for example if a driver, or an affiliate then:
  - proof of identity for the person – for example a copy of the person's driver licence
  - evidence that the person is associated with the taxpayer, for example, documentation on the taxpayer's letterhead which had been signed by the person acknowledging the association
  - evidence that the person agreed to collect the levy amount on behalf of the taxpayer, and to pay it to the taxpayer (or as otherwise agreed). For example, a copy of a signed acknowledgement by the person of policies and procedures for collecting and paying levy amounts
  - records or other evidence of passenger service transactions for which the person collected levy amounts that should have passed on to the taxpayer (or as otherwise agreed)
  - evidence that the person was associated with those passenger service transactions, such as evidence of them being logged into the taxpayer's systems at the time the passenger service transactions took place

AND

(ii) That the person collected the levy amount but did not pay the amount to the taxpayer:

- evidence that they collected the levy amount, such as a copy of a tax invoice/receipt or records from a fare calculation device which contain evidence of the levy amount being collected by the person
- evidence that the person did not pay the levy amount to the taxpayer, or as otherwise agreed, (such as to an affiliated taxi service provider); for example, a declaration by the taxpayer outlining the details of the circumstances

AND either (iii) OR (iv) below

(iii) The taxpayer took reasonable steps to recover the amount:

- evidence of written notice being given to the person that a levy amount is due or outstanding; for example, reminder notices
- records of entering into (or attempting to enter into) payment arrangements for the repayment of outstanding levy amount

(iv) The taxpayer took reasonable steps to have the amount paid, such as:

- evidence of attempting to recover through the bailment agreement or affiliated service provider or through having the person work off the debt
- evidence of attempting to deduct the outstanding amount from an account associated with the person.

#### **2.4.4 Evidence to support an objection in the event that the taxpayer has given reasonable directions to a person and they have not collected a levy amount**

If the objection is made pursuant to clause 11(1A) of Schedule 3 of the Regulation asserting that the taxpayer gave a driver, affiliated provider or other person reasonable directions as to the collection of a levy amount and the amount was not collected by the person as directed by the taxpayer and the taxpayer took all reasonable steps to recover the amount, or to have the amount paid, the following types of evidence are required:

- (i) Evidence that the person was in a position to collect a levy amount relating to the passenger service transactions for the assessment period on behalf of the taxpayer – for example if a driver, or an affiliate then:
- proof of identity for the person – for example, a copy of the person's driver licence
  - evidence that the person is associated with the taxpayer, for example, documentation on the taxpayer's letterhead which had been signed by the person acknowledging the association
  - evidence that the person agreed to collect the levy amount on behalf of the taxpayer, and to pay it to the taxpayer (or as otherwise agreed). For example, a copy of a signed acknowledgement by the person of policies and procedures for collecting and paying levy amounts

- records or other evidence for passenger service transactions that they should have collect levy amounts for and passed on to the taxpayer
- evidence that the person was associated with those passenger service transactions, such as evidence of them being logged into the taxpayer's systems at the time the passenger service transactions took place

AND

(ii) Evidence that the taxpayer gave the person a reasonable direction as to the collection of the levy amount

- evidence that the person was given instruction on the process for reporting on, collecting and remitting levy amounts for passenger service transactions – this could include specific instructions on certain aspects of the process such as:
  - keeping certain records in relation to the number of trips
  - collecting an additional amount from passengers in respect of the levy
  - that the levy be added to the total fare in a particular way (such as part of the flag-fall or to the total fare)
  - that collected levy amounts must be remitted to a taxpayer (or as otherwise agreed) in a particular way or on a particular day
- evidence that the person understood those instructions, such as evidence that they have completed training, or an acknowledgment that they needed to use the process and the implications of failing to follow the direction
- evidence that the direction was reasonable may include:
  - how was the direction given - if it was clear and simple; if it was given in writing; if it was reasonable
  - policies and procedures that the taxpayer had in place outlining the obligations on drivers in regards to levy collection and remittance and training provided on the policies and procedures
  - if the purpose of the direction directly related to the obligations of the taxpayer, namely counting passenger service transactions or collecting the levy amount

AND

(iii) Evidence that the person did not collect a levy amount, such as a declaration by the taxpayer describing the circumstances, or financial records

AND (iv) OR (v) below

(iv) The taxpayer took reasonable steps to recover the amount:

- evidence of written notice being given to the person that a levy amount is due or outstanding, for example reminder notices



- records of entering into (or attempting to enter into) payment arrangements for the repayment of outstanding levy amount
- (v) The taxpayer took reasonable steps to have the amount paid, such as:
- evidence of attempting to recover through the bailment agreement or affiliated service provider or through having the person work off the debt
  - evidence of attempting to deduct the outstanding amount from an account associated with the person.

## 2.5 Liability for levy amount continues

Regardless of having lodged an objection, a taxpayer must pay the initially assessed levy amount if the initial assessment has been referred to Revenue NSW. The taxpayer is also liable to pay the levy amounts issued in respect to assessment periods that arise whilst the objection is being considered.

## 2.6 Consideration of the objection

Section 91 of the Tax Act provides that an objection must be considered and either allowed, in whole or part, or disallowed and the taxpayer advised of that determination by way of a notice in an approved form.

Objections that have been lodged within time or established special circumstances to justify late lodgement, will be considered by an Assessor (Manager Sanctions, manually calculated initial assessments / Manager Authorisation and Levy Administration, automatic initial assessments) to determine whether the taxpayer has made out the ground upon which the objection is based.

The Assessor will review the following:

- the written objection to ensure it is valid: paragraph 2.2
- the details of the assessment to which the objection relates to ascertain the assessment period and levy amount
- the supporting evidence to determine if it establishes the ground upon which the objection is based – see paragraph 2.4 to identify the acceptable types of evidence for each ground.

Based on the evidence provided, the relevant Assessor (Manager Sanctions or Manager Authorisation and Levy Administration) will determine if the objection has or has not been established and, if it has been established, then the degree to which it has.

**Note:** The Assessor of an objection is not the same person that made the initial assessment on which the objection is made. See section 2.1 above.

## 2.7 Content of the determination to disallow or allow in part only

Determinations to disallow an objection or allow an objection in part only, are reviewable decisions and must therefore include the following in accordance with section 49(3) of the *Administrative Decisions Review Act 1997*:

- the outcome of the determination
- if disallowed or allowed in part only, the reasons for reaching this determination

- the findings on material questions of fact, referring to the evidence or other material on which the findings were based
- the Assessor's understanding of the applicable law
- the reasoning processes that led the Assessor to the conclusion(s) and determination
- information on the taxpayer's right to make an application for review of the determination to the NSW Civil and Administrative Tribunal or the Supreme Court of NSW.

The above content of the determination is included in a Notice of Determination.

## 2.8 Reassessing levy liability

Once a determination is made, the Assessor (Manager Sanctions, manually calculated initial assessments / Manager Authorisation and Levy Administration, automatic initial assessments) will, if appropriate, recalculate the levy liability and issue a new Notice of Assessment in an approved form for the purposes of section 14 of the Tax Act.

There are two types of Notice of Assessment for use in this situation depending on whether the initial levy amount had been debited from the taxpayer's nominated bank account.

- Notice of Assessment – where initial assessment referred to Revenue NSW
- Notice of Assessment – where initial assessment not referred to Revenue NSW

These notices are able to be used where the Assessor allows the objection in whole, in part, or disallows the objection. The notice templates outline the applicable sections to be included when allowing an objection in part or disallowing an objection.

If the determination is to disallow an objection, a new Notice of Assessment is issued reflecting the levy amount that was initially assessed for that assessment period. Combined in this new Notice of Assessment is:

- a Notice of Withdrawal to withdraw the initial assessment in line with best practice advice from Revenue NSW;
- a Notice of Determination in accordance with section 93 of the Tax Act, giving notice to the objector of the determination of the objection.

Revenue NSW must be advised of the new assessment to enable the applicable payment process to be activated to either refund an amount to the taxpayer or require payment of the levy amount or any outstanding balance.

### 2.8.1 Notice of Assessment – where initial assessment referred to Revenue NSW

Revenue NSW is only able to directly debit a nominated bank account once per assessment period. Therefore, if the levy amount for the assessment period that is subject to the objection has already been debited from the taxpayer's nominated bank account, the direct debit payment method will no longer be available to the taxpayer and any outstanding balance will need to be paid to Revenue NSW by either a Bpay or credit card payment.

Revenue NSW allocates a unique payment reference number in respect of any amount that is debited from a taxpayer's nominated bank account. The payment reference number is included in the report received from Revenue NSW following the debit of the taxpayer's nominated bank account. This payment reference number is to be inserted in the new 'Notice of Assessment – where initial assessment has been referred to Revenue NSW' to enable any subsequent payments



or refunds to be tracked. Instructions on how to pay the levy amount is also included in the new 'Notice of Assessment – where initial assessment has been referred to Revenue NSW'.

Prior to issuing the new 'Notice of Assessment – where initial assessment has been referred to Revenue NSW', the relevant Assessor will need to contact Revenue NSW to obtain information about whether the taxpayer has to pay an additional levy amount as a result of the determination or is entitled to a refund. The amount payable or to be refunded is included in the Notice as well as the total levy amount for which the taxpayer is liable for the specific assessment period.

If the taxpayer is required to pay a further amount, instructions on how to pay are included in the new 'Notice of Assessment – where initial assessment has been referred to Revenue NSW'.

A copy of the 'Notice of Assessment – where initial assessment has been referred to Revenue NSW' is forwarded to Revenue NSW at the same time as it is sent to the taxpayer.

### **2.8.2 Notice of Assessment – where initial assessment not referred to Revenue NSW**

If the initial assessment had not been referred to Revenue NSW on the 21<sup>st</sup> day of the month in which the notice was issued, Revenue NSW would not have received the relevant data through Salesforce to debit the taxpayer's bank account for the assessment period to which the objection relates. Salesforce will record this assessment as "Held" and the taxpayer will be sent a communication advising that their assessment has been delayed.

Once the new 'Notice of Assessment – where initial assessment not referred to Revenue NSW' is issued, Salesforce will forward the Notice to Revenue NSW as if it is an initial assessment and the reassessed levy amount will be directly debited from the taxpayer's nominated bank account by Revenue NSW on the 26<sup>th</sup> day of the month.

## **2.9 Withdrawal of an assessment**

An objection may be allowed in whole resulting in either reduced liability or no liability for a particular assessment period. If liability is reduced, a new Notice of Assessment will be issued in accordance with paragraph 2.8 reflecting the reduced levy amount payable.

If an objection is allowed in whole resulting in the taxpayer having no liability for the relevant assessment period, section 13 of the Tax Act requires the withdrawal of the assessment if an initial notice of assessment had been issued, at any time within 5 years after the date of issue of the notice.

The Assessor must issue a Notice of Withdrawal in an approved form in accordance with section 14 of the Tax Act. A copy of the Notice of Withdrawal must also be sent to Revenue NSW to advise them of the change to the taxpayer's liability.

**Note:** The Assessor of an objection is not the same person that made the initial assessment on which the objection is made. See section 2.1 above.

## **2.10 Compromise assessment**

Section 12 of the Tax Act enables the Point to Point Transport Commissioner, with the agreement of the taxpayer, to make a compromise assessment in the following circumstances:

- if it is difficult or impractical to determine a person's levy liability without undue delay or expense because of the complexity or uncertainty of the case, or for any other reason

- for the purposes of settling a dispute between the Commissioner and a taxpayer concerning the taxpayer's levy liability (whether or not a previous assessment has been made).

While an objection cannot be lodged in respect to a compromise assessment (section 86(2)(a) of the Tax Act) an objection can be determined by way of a compromise assessment in accordance with the Passenger Service Levy Compromise Assessment Policy.

Once an agreement is reached in respect to the compromise assessment, the Assessor issues the taxpayer a Notice of Compromise Assessment (which is an approved form as required by section 14 of the Tax Act) and forwards the notice to Revenue NSW for payment purposes.

### 3. Accountabilities

Functions relating to determining objections to assessments of levy liability are generally performed by the Operations branch of the Commission under delegation from the Commissioner.

Some functions relating to determining objections to assessments of levy liability may be shared by staff across Commission divisions.

### 4. Breaches of this procedure

TfNSW may commence applicable disciplinary action if a person to whom this Procedure applies breaches this Procedure (or any related Policy), including termination of employment and if fraudulent, criminal charges.

### 5. Document history

Date & Policy No	Approved by	Amendment Notes
19 April 2018 OP18012	Point to Point Transport Commissioner	Approved
12 October 2018 OP18012	Point to Point Transport Commissioner	Approved for website publication