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## **Uniform Protest Statute**

*Adopted August 31, 1990*

### **•• Section 1. Protest of Notice of Assessment [Appeal].**

(a) A person aggrieved by a Notice of Assessment [Intent to Assess, Levy, etc.] shall have the right to protest [appeal] such notice only if the protest [appeal] is perfected in full and timely compliance with the requirements contained in subsections (b) and (c) hereof.

(b) The taxpayer shall have thirty (30) days after the date of mailing of the Notice of Assessment [Intent to Assess, Levy, etc.] within which to file a written Notice of Protest [Appeal], signed by the taxpayer or his duly authorized representative, which shall contain the following documents, information and payments:

(1) Taxpayer's name, address, telephone and Social Security or Tax Id. number.

(2) Name, address, and telephone number of taxpayer's representative, if any, for the purposes of the protest. In such case, a written power of attorney shall be filed with the Notice of Protest [Appeal].

(3) Type of tax and tax period(s) under protest.

(4) Amount under protest and amount uncontested.

(5) A copy of the Notice of Assessment at issue.

(6) Taxpayer shall remit the entire uncontested amount of the tax, interest, and penalty, if any, that is due.

(7) Statement of Grounds for Protest [Appeal].

For the purpose of this provision, the date of mailing of the Notice of Assessment shall be determined by the date of the Notice of Assessment or the date of postmark, whichever is later.

(c) The written Statement of Grounds for Protest [Appeal] shall state the specific grounds upon which the protest [appeal] is based and the specific facts supporting each ground asserted. Upon written request made within the time permitted for the filing of the Notice of Protest [Appeal], the taxpayer shall be granted additional time, not to exceed sixty (60) days from the date of the filing of the Notice of Protest [Appeal], within which to file the Statement of Grounds for Protest [Appeal].

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(d) If either the Notice of Protest [Appeal] or the Statement of Grounds for Protest [Appeal] is filed by mail, it must be addressed to [Department of Revenue] and the applicable postage paid. The date of the United States postmark will be deemed the date of filing; however, if the filing is accomplished by other than through delivery by the United States Postal Service, the date of actual receipt will be deemed the date of filing.

(e) If the taxpayer fails to fully or timely file either his Notice of Protest [Appeal], along with the entire amount of uncontested tax, interest, and penalty due, or his Statement of Grounds for Protest [Appeal], the protest [appeal] shall be considered as not timely perfected and shall be dismissed. Upon such dismissal, the Notice of Assessment [Intent to Assess, Levy, etc.] shall be final and shall not be reviewable in any court by appeal, mandamus, administrative review, or any other method of direct or collateral attack.

(f) Notwithstanding the foregoing, the taxpayer shall not be precluded from paying the tax, interest and penalty due under the Notice of Assessment and seeking a refund thereof pursuant to § \_\_\_\_\_ [the state statutory provisions for making payment and applying for refund].<sup>1</sup>

### **••• Section 2. Penalty for Frivolous Protest.<sup>2</sup>**

If a protest [appeal] to the Notice of Assessment [Intent to Assess, Levy, etc.] or any filing or act taken with respect thereto is determined by the [Tax Administrator] to be frivolous or for the purpose to delay or impede the administration of taxes under the act [article, part, etc.], a penalty of \$100.00 or 25% of the total amount of tax under protest, whichever is greater, shall be added to the tax.

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<sup>1</sup>Optional provision.

<sup>2</sup>Section 2. represents the statutory language recommended should a state determine to adopt a penalty for the filing of a frivolous protest. The Commission makes no recommendation as to whether a state should or should not adopt such a penalty. However, if such a penalty is adopted by a state, the Commission recommends, for uniformity purposes, that the provision take the form provided.